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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 491

UNITED STATES OF AMERICA, APPELLANT,

**INTERSTATE COMMERCE COMMISSION AND
UNITED STATES OF AMERICA**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

FILED OCTOBER 24, 1955

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 491

UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION AND
UNITED STATES OF AMERICA

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DISTRICT OF COLUMBIA

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In the United States District Court
for the District of Columbia

Civil Action No. —

UNITED STATES OF AMERICA, PETITIONER,

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF
AMERICA, DEFENDANTS

PETITION TO ENJOIN, SET ASIDE AND ANNUL AN ORDER OF THE
—INTERSTATE COMMERCE COMMISSION—Filed September 20, 1954

I

The petitioner, United States of America, brings this action against the Interstate Commerce Commission and the United States of America to enjoin, set aside and annul a certain order made and issued by the Interstate Commerce Commission (hereinafter sometimes referred to as the Commission) on June 1, 1953, in a proceeding known as *United States of America v. Aberdeen and Rockfish Railroad Company, et al.*, Docket No. 30939, to be reported in 289 I.C.C. 49. Copies of said order and the report made and issued by the Commission in that proceeding, which by the terms of the order is made a part thereof, are attached to this petition and made a part hereof by reference, as Appendices A and B, respectively. Petitioner's request in that proceeding for reargument and reconsideration was denied by an order made and issued by the Commission on November 16, 1953. A copy of such order is attached to and made a part hereof by reference, as Appendix C.

3

II

This action arises under, the United States is made a defendant herein, and the jurisdiction of this Court rests on, the Act of June 25, 1948 C. 646, 62 Stat. 869, 28 U.S.C.A. §§ 1336, 1398, and 2321-2325, and § 17(9) of the Interstate Commerce Act, 54 Stat. 916, 49 U.S.C.A. § 17(9).

III

Petitioner, acting by and through its Department of the Army in the performance of its military functions, has shipped over the lines of various railroads since May 1, 1951, numerous carloads of goods in interstate or foreign commerce from points in the United States to the Port of Norfolk, Virginia, for transportation by vessel to points beyond that port, and from the Port of Norfolk to points

in the United States carload shipments of goods which have been transported to that port by vessel from points beyond Norfolk, Virginia. These shipments consisted of so many types of commodities that it is impractical to list them in this petition. The transportation charges on such shipments have been, or will be, borne by this petitioner.

IV

For many years export, import, coastwise and intercoastal traffic has been moved over the wharves or piers at the Port of Norfolk, Virginia. These pier facilities include Army Base Piers 1 and 2, which for more than 25 years have been among the principal facilities for the interchange of such traffic between the railroads and ship lines serving that port. These Army Base piers were built by this petitioner's War Department and used for the handling of military property and personnel during and shortly after World

4 War I. Thereafter until September 1, 1925, most of these pier facilities were leased to the City of Norfolk, which used them as public municipal piers. From September 1, 1925 to June 14, 1942, these piers were leased to private corporations which operated them as general commercial piers and acted as terminal operators for the railroads. Due to the World War II emergency these Army Base piers became a part of the Hampton Roads port of Embarkation on June 15, 1942. On that date one-half of Pier No. 2 was occupied by the Navy Department and the remainder of the Army Base pier facilities was taken over by the Army and used for the movement of military property and personnel and a small volume of commercial shipments. On April 1, 1947, the pier facilities theretofore operated by the Army were leased to Norfolk Terminals Division of Stevenson & Young, Inc., (hereinafter sometimes referred to as Stevenson) which used them in the operation of a public commercial water-front terminal, acting as the terminal operator for the railroads which serve Norfolk.

V

Due to the emergency caused by its participation in the Korean conflict, it became necessary for this petitioner to re-establish the Hampton Roads Port of Embarkation and supervise the movement of its traffic over the Army Base piers at Norfolk in order to supply its armed forces overseas. Therefore, effective on May 1, 1951, the lease of the pier facilities to Stevenson was cancelled and this petitioner's Department of the Army took possession of the pier facilities, other than those parts which were occupied by the Navy and a small part which was again leased to Stevenson for its use in continuing to handle commercial traffic. It was necessary for the Army Engineers to dredge the channels and make extensive

repairs to the pier facilities and to use certain space for the accumulation of seasonal traffic for trans-shipment.

5

VI

For many years it has been the general practice of the railroads serving the North Atlantic ports, including the Port of Norfolk, to unload from rail cars to the piers and to load from the piers to the rail cars the traffic which they interchange with the ship lines at those ports. Some of the railroads serving the Port of Norfolk, do not own piers where they perform this service, but they provide the necessary pier facilities under contracts with terminal operators who act as their agents and furnish the pier facilities (wharfage) for the use of these railroads and perform the handling services incident to the unloading and loading of freight moving over those facilities.

VII

During the time the Army Base pier facilities were leased and operated by private terminal corporations, the railroads serving the Port of Norfolk, with certain exceptions not here material, held out in their tariffs applicable on traffic moving on shipside rates to and from that port, that they would absorb the expense of wharfage and of handling such traffic between rail cars and pier floors. Those railroads have in practice, delivered shipments on the piers owned and operated by them or their agents, the local terminal operators. Under such an arrangement, the railroads paid Norfolk Terminals Division of Stevenson & Young, Inc., its charges for wharfage (the use of the piers) and for handling (unloading or loading) services. These charges varied somewhat for certain commodities, but the usual charges were 1 cent per 100 pounds for wharfage and 3 cents per 100 pounds for handling, later increased to $1\frac{1}{4}$ cents and $3\frac{3}{4}$ cents, respectively. These charges for the services rendered by Stevenson were thus absorbed in the line-haul shipside rates to and from the Port of Norfolk both on the traffic of this petitioner and on commercial traffic prior to May 1, 1951, in accordance with the applicable provisions of the railroad's tariffs.

6

On May 1, 1951, the Army took possession of certain Army Base pier facilities and exercised control over the movement of its traffic over those facilities. Prior to that time the Army made written requests to each of the railroads serving the Port of Norfolk for an allowance to it of the established wharfage charges and for an allowance to it or its contractors for handling services equal to the charges that they paid to Stevenson for such services, or in the alternative that they perform such handling services, on its traffic moving over the Army Base pier facilities. The railroads denied those requests and refused to pay Stevenson for its terminal

services which it rendered on the military traffic of this petitioner. This petitioner, therefore, has been required to provide piers without compensation therefor and to bear the expense of the handling services on its export traffic to and from the Port of Norfolk, and has received no allowance for wharfage and handling. The railroads have continued to charge the full line-haul shipside rates on this petitioner's traffic over the Army Base pier facilities and they refused to provide wharfage or perform the handling services, as provided in their tariffs, and to make any allowance for these facilities and services.

VIII

During the time the pier facilities were leased and operated by private corporations, the handling of the traffic between rail cars and pier floors was performed by the terminal operator with civilian labor. After the Army took possession of certain Army Base pier facilities on May 1, 1951, Stevenson continued to operate as a public terminal operator in handling commercial traffic at the Army Base piers, was engaged by the Army to perform the service of handling this petitioner's traffic over these pier facilities, and performed such service with the same civilian labor that it employed to handle commercial traffic over the piers theretofore and during the same period of time. The responsibility of these railroads under their published tariffs was therefore discharged in substantially the same manner by the Army as theretofore by Stevenson operating these pier facilities as a public terminal. These railroads refused the Army's request that they perform the handling service to the same extent that such service had for many years been included in their line-haul shipside rates, and at no time since May 1, 1951, have they offered to perform, or performed, such handling service.

When wharfage and handling between rail cars and ships at the Army Base piers were provided by the private corporations, the charges therefor were absorbed by the railroads. But when this petitioner found it advisable or necessary, on account of a national emergency, to take over these terminal facilities, the railroads refused both to continue to perform the handling service and to reimburse this petitioner in any amount for the use of the wharf facilities or the cost of handling, which it was forced to perform by their refusal to assume, with the result that this petitioner has been deprived of the full service to which it is entitled under the shipside rates, and the railroads have collected and retained compensation for services which they did not perform.

IX

As the result of the failure and refusal of the railroads to provide wharfage facilities and to perform the necessary handling service or

to make an allowance therefor on its export, import, coastwise and intercoastal traffic moved over the Army Base piers at the Port of Norfolk, on November 20, 1951, this petitioner filed with the Interstate Commerce Commission a complaint alleging that such failure and refusal constituted violations of Section 1, 2, 3 (1) and 6 of the Interstate Commerce Act. The Commission was asked to make a determination and find that such failure and refusal with respect to all of this petitioner's traffic moving on and since May 1, 1951, were unlawful as alleged and to require these railroads to cease and desist from such violations in the future.

The defendant railroads, by separate answers, denied generally the allegations of the complaint. The proceeding was heard at Norfolk, Virginia, on March 25, 26 and 27, 1952. This petitioner filed exceptions to the examiners' proposed report and on April 8, 1953, the issues were argued orally before the Commission. On June 1, 1953, the Commission (Chairman Alldredge dissenting and Commissioners Lee and Splawn not participating) found the railroads' failure and refusal to absorb wharfage and handling costs on the described traffic was not unreasonable or otherwise unlawful and dismissed the complaint (See Appendices A and B to this petition).

X

The order of the Commission of June 1, 1953 (See Appendix A) is unlawful and void, and beyond the power of the Commission to make for the following reasons:

- (a) In making said order, the Commission failed to consider material evidence of record;
- (b) The Commission misapplied the law;
- (c) The Commission failed to make essential findings of fact that would support rationally the order made by the Commission;
- (d) The findings of fact made by the Commission are not supported by any substantial material evidence;
- (e) The Commission's order is otherwise arbitrary, capricious and without support in and contrary to law and the evidence.

9 By reason of the arbitrary and capricious action and errors of the law of the Commission in entering its order of June 1, 1953, this petitioner is left without an adequate remedy at law and will be subjected to irreparable damage if the relief herein prayed for is not granted.

WHEREFORE, the petitioner prays that:

1. Pursuant to the statutory provisions referred to in Paragraph II of this petition, there be constituted to hear this case a special court of three judges, one of whom shall be a circuit judge.

2. Upon final hearing and submission of this case, the Court adjudge and determine that the order of the Interstate Commerce

Commission of June 1, 1953 (Appendix A), is unlawful, arbitrary, capricious, without support in and contrary to law and the evidence; that a decree be entered perpetually enjoining, setting aside, and annulling the said order; that the matter be remanded to the Commission for further action not inconsistent with this Court's decree; and

3. This petitioner have such other and further relief in the premises as the nature of the case shall require and as to this Court seems proper.

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10

APPENDIX A TO PETITION

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION,
held at its office in Washington, D. C., on the 1st day of June,
A. D. 1953

No. 30939

UNITED STATES OF AMERICA

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

GEORGE W. LAIRD,
Acting Secretary.

(Seal.)

11

APPENDIX B TO PETITION

Interstate Commerce Commission

No. 30939

UNITED STATES OF AMERICA

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.

Submitted April 8, 1953. Decided June 1, 1953

Failure and refusal of defendants to absorb wharfage and handling costs on complainant's traffic moving over its piers at Norfolk, Va., on and since May 1, 1951, found not shown to subject complainant to the payment of rates and charges which were or are unjust, unreasonable, or otherwise unlawful. Complaint dismissed.

Major General E. M. Brannon, Brigadier General Robert W. Brown, Raymond Krebill, L. E. Masoner, First Lieutenant R. E. Costello, and W. J. Lippman for complainant.

Windsor F. Cousins, A. J. Dixon, Martin A. Meyer, Jr., Charles P. Reynolds, R. B. Clayton, J. P. Fishwick, John W. Hanifin, R. E. Krieger, and Walter C. Plunkett for defendants.

William C. Siebert for State Corporation Commission of Virginia, and H. V. C. Wade for Virginia Division of Ports, interveners.

REPORT OF THE COMMISSION

PATTERSON, Commissioner:

Exceptions to the report proposed by the examiners were filed by the complainant, the defendants replied, and the issues were orally argued. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

12 By complaint filed on November 20, 1951, the complainant, herein sometimes referred to as the Army, alleges that the defendants' failure and refusal to grant it an allowance, or otherwise to absorb the cost of wharfage and handling charges to the complainant or its agent on and since May 1, 1951, on export, import, intercoastal, and coastwise traffic of the complainant, moving over Army Base piers 1 and 2, at Norfolk, Va., subjects the complainant to the payment of rates and charges for transportation which were, are and for the future will be unjust and unreasonable, and in violation of sections 2, 3 (1), and 6 of the Interstate Commerce Act. The complainant requests an administrative finding as to all its shipments which have moved on and since May 1, 1951.

Port facilities owned by the complainant at Norfolk are designated variously as Maritime Administration Terminals; Norfolk Terminals, Division of Stevenson & Young, Inc. (hereinafter sometimes called the Stevenson company); Army Base piers 1 and 2; Hampton Roads Port of Embarkation; and the Army Base. These port facilities are those described in *United States of America v. Aberdeen & R. R. Co.*, 263 I. C. C. 303, 264 I. C. C. 683, and 269 I. C. C. 141. In that proceeding this same complainant filed complaint on April 15, 1944, alleging that failure of defendants to pay allowances for wharfage and handling incident to shipside receipt and delivery of its export, import, coastwise, and intercoastal freight at Army Base piers 1 and 2, Norfolk, Va., or to furnish wharfage and perform the services themselves, was an unjust and unreasonable practice resulting in unjust discrimination, in violation of sections 1 and 2 of the Interstate Commerce Act. That complaint sought an award of reparation and a cease and desist order, based upon its allegations as to violations of the act.

The complaint in that proceeding was dismissed by our order, which was set aside by the Supreme Court, 337 U. S. 444, upon appeal from a statutory three judge court involving only the question as to the right of the Government to maintain a suit against itself. In overruling the statutory court decision, that the Government could not sue itself, the Supreme Court remanded the action to the district court for consideration by a single district judge. The action was later heard by a judge of the district court in the District of Columbia, and that complaint was dismissed. Upon appeal the decision of the district court was reversed by the United States Court of Appeals for the District of Columbia, July 18, 1952, *United States v. Interstate Commerce Commission*, 198 Fed. (2d) 958. The Supreme Court denied certiorari on November 24, 1952. Our order of January 12, 1953, reopened that case for further proceedings consistent with the opinion of the court of appeals, and was assigned for further hearing on June 1, 1953.

The proceeding herein is a different case from that referred to above and relates to shipments moving since May 1, 1951, long after our action in the prior proceeding had become subject to court review, and some 7 months before that case was argued to the court of appeals. The tariffs and physical operations, with respect to complainant's shipments here involved, materially differ from those involved in the prior proceeding, as is more fully set forth hereinafter. The only similarity between the two proceedings is that practically the same parties oppose each other, the same general character of commodities are involved, and the place where switching operations occurred is the same. Consideration and decision in the prior proceeding does not legally relate to or control the

13 consideration and decision herein. It is not believed that the decision and opinion of the court of appeals in the prior case, is determinative of the factual and legal questions presented herein. However our consideration and action in this proceeding will carefully take notice of the opinion of the court of appeals, in the prior proceeding, and conform to legal principles therein stated, as we understand them to apply to the facts and legal situations here involved.

Late in 1950, the Department of the Army decided that to meet the requirements of United States forces and supply bases overseas, the Army Base at Norfolk should be reactivated. An engineering survey, made early in 1951, showed the need for rehabilitation of the property due to deterioration. The estimated cost of more than \$3,000,000 included such major items as dredging; repairs to the decking of the piers; replacement of thousands of ties under the railroad tracks; repairs to electric lines, the water system, storm and sanitary sewers, and transshipping sheds; and general repairs to all warehouse buildings, roadways, and bulkheading along the water front. The Army assumed the cost, which had exceeded the above estimate at the time of the hearing herein, and the work of rehabilitation was still in progress.

The entire Army Base property at Norfolk, including all railroad tracks, is owned by the U. S. Government and has been under the management of the United States Maritime Commission. For some time prior to May 1, 1951, Army Base Piers 1 and 2, and portions of the surrounding property, had been under lease to the Stevenson company and were operated by it as a public terminal. On that date, the lease was revoked and the Army took possession under a permit granted by the Maritime Administration. At the same time the Army by sub-permit granted certain portions of the Army Base back to the Maritime Commission, which, in turn, granted the Stevenson company the use of certain portions of the facilities for operation of a public terminal for commercial traffic, subject to changes to meet the needs of the Army. One-half of pier No. 2 and the adjoining bulkhead, and certain other portions of the base, are used by the Navy under a permit from the Maritime Commission. The record discloses no distinction between the leases and the permits insofar as they provide that the Government could curtail or extend the use of any of the facilities covered thereby whenever the Army determined that it would or would not require them for its own use.

Army Base pier No. 1 is 1,328 feet long and 300 feet wide. Pier No. 2 is the same in length but 329 feet in width. Both piers are equipped with rail trackage, and have covered storage areas which are used for temporary storage and the assembly of cargo awaiting vessel space. These piers and bulkheads can accommodate 8 to 10

oceangoing vessels drawing 35 feet or less when fully loaded. In addition to the piers, there is an LST ramp. The rail trackage on the piers includes 3 depressed tracks which run throughout the length of the inside center of each pier, and 2 tracks on each of the 4 pier aprons.

On the land approach to the piers are located 8 brick and concrete single-story warehouses, which are divided by firewalls into 90 compartments, 140 feet by 160 feet, with total floor space of over 2,000,000 square feet. These buildings are served by depressed rail tracks to aprons on one side and street level doors on the opposite side. Adjacent thereto are open storage areas of about 2,750,000 square feet which are utilized by means of both rail and motor equipment.

14 Of the nine rail lines¹ which serve the city of Norfolk, only the lines of the Virginia Railway Company enter the Army base. Traffic of the other rail lines is transported to the base by the Norfolk and Portsmouth Belt Line Railroad Company. Rail trackage on the base exceeds a total of 28 miles, on which 1,000 cars can be accommodated and an additional 800 cars on the tracks along the warehouses and on the piers and pier aprons. The Army owns 35 flatcars and 3 diesel locomotives, which it uses for the movement of its traffic between points on the base.

Two rail leads enter the base, one through the north gate, over which the Belt Line generally operates, and one through the east entrance to the base known as Quartermaster Junction, over which the Virginian brings in most of its traffic. The north-gate lead joins the central-rail running track above South Street and a short distance east of the pier No. 1 rail storage or holding yard, located between warehouses 3 and 4, on the land approach to that pier. Another rail storage or holding yard, of much larger capacity, is located east of Hampton Boulevard, and is known as the uptown yard. That portion of the base west of Hampton Boulevard is enclosed by a fence. The north-gate entrance through the fence admits only the rail lead of the Belt Line. The gate at Hampton Boulevard, known as the east gate, is the main entrance to the base for all types of traffic. The rail lead through the east gate is double track. The distance from the east gate westward to the entrance to pier No. 1 is almost a mile. The distance from the east gate east-

¹ The Atlantic and Danville Railway Company, Atlantic Coast Line Railroad Company, the Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, Norfolk Southern Railway Company, The Pennsylvania Railroad Company, Seaboard Air Line Railroad Company, Southern Railway Company, and Virginian Railway Company.

ward to the Quartermaster Junction entrance of the Virginian to the base is about 2 miles.

Pier No. 1 yard has 6 tracks, ranging in length from about 1,600 feet to 1,800 feet. The center track is generally kept open as a running track. The uptown yard has 2 main running tracks, 1 of which serves the north side of the yard and the 7 storage tracks on that side, and the other serves the 10 storage tracks on the south side of that yard. The storage tracks on the north side range in length from about 900 to 2,000 feet. The storage tracks on the south side of that yard are from about 1,200 to 1,400 feet in length.

The Army Base at Norfolk was reactivated and taken over by the Army primarily to handle a special engineering project, designated as "Blue Jay." The volume of cargo required in connection with that project alone was estimated to encompass the movement of more than 250,000 tons of cargo and the use of 6,000 or 7,000 persons. For this purpose more than 70 vessels of different kinds were to be required.

From its actual experience the Army has determined that ports of embarkation must be operated by personnel of the military service and civilian employees of the Government. Only such personnel is said to have the training necessary to take care of the large amount of prestorage planning of vessels which precedes the labor of actual loading. Precise overseas requirements demand absolute control over all shipments from points of origin to their final destination overseas. Security of all materials, whether classified as secret or not, must be assured. The base has been organized so as to provide adequate safeguards, prevent egress and ingress of unauthorized persons, eliminate pilferage, and assure protection against deterioration or destruction by fire.

Freight handled through the port facilities at the base includes cargo for special engineering projects, comprising chiefly construction equipment and materials, such as piling, lumber, cement and steel girders; cargo for military troop support, comprising subsistence (other than cold storage items), packaged petroleum products (except gasoline), clothing and equipage, signal equipment, engineer equipment (including bridging and construction materials), vehicles of all types, and ordnance; cargo for the mutual defense assistance program, made up of items similar to those mentioned above but especially vehicles and ordnance; and commercial cargo, to a limited extent.

For some time prior to May 1, 1951, the Stevenson Company, as agent for the Maritime Administration, was able to use any of the port facilities at the Army Base needed for the conduct of the base as a public commercial marine terminal. On and after that date, when the base was taken over by the Army, the facilities which the Stevenson Company was permitted to use for the conduct of com-

mercial operations were very limited. At the time of the hearing, that company was not trying to obtain any additional commercial traffic because it would interfere with the Army traffic.

In conducting its commercial operations prior to May 1, 1951, the Stevenson company had a contract with each of the Norfolk rail lines under which it acted as their agent in the performance, among other duties at the base, of unloading export freight from cars to the extent that the rail lines obligated themselves by provisions of their tariffs to perform that service. For this service the Stevenson Company received compensation of 75 cents a ton, and 25 cents a ton for wharfage (furnishing the pier), from the rail carriers. On and since that date, the Stevenson company has performed the same service in connection with the small number of commercial shipments which it handles and has been likewise compensated by the carriers under contracts. Commercial shipments handled by that company, both before and after the base was taken over by the Army, were in its possession as agent for the carriers, and the shipper was at no time in possession of such shipments between the time they reach the base and the time they were placed at shipside for loading to vessel. Government freight which moved through the base just prior to May 1, 1951, was handled by the Stevenson company as agent for the rail lines just the same as any commercial freight, and the same compensation was paid to it by the rail carriers for unloading the shipments and for wharfage.

On and since May 1, 1951, the Stevenson company has been employed under contract with the Army to perform at the base such operations as intransit storage services, stevedore, checking, and clerking services, and car, truck, and barge loading and unloading services. Insofar as these services are covered, the contracts provide that all income derived from sources other than the Government for cargo handling shall be for the account of the contractor (the Stevenson company) and collected by it, but the contractor shall deduct the amounts so collected from the invoices it renders the Government.

The reasons given by a witness for the Army for entering into the contracts with the Stevenson company were to have "car unloading and other related services performed by commercial terminal operators who had the status and the experience, also the people and equipment to operate the terminal." It should be observed that the contracts covered the car-unloading services on all Army freight, whether or not the shipments were entitled to the performance of such services by the rail carriers as alleged by the instant complaint. Actual stevedoring services on the base are performed under contract by stevedoring companies and are not performed by the Stevenson company.

A yardmaster or a yard clerk, employed by the complainant, is

on duty at all times to give instructions for disposition of cars of Army freight delivered at the base. When either the Belt Line or the Virginian has cars for delivery, the yard clerk at the base is notified by telephone. If placement at a pier or warehouse is ready for any of those cars, the carrier is told where to make delivery. These instructions are confirmed in writing and handed to the conductor when he arrives at the base. Cars for which placement orders are not ready are left in the pier No. 1 yard by the Belt Line and in the uptown yard by the Virginian, in accordance with a general understanding as to the disposition of such cars.

Delivery of cars on the tracks in the storage or hold yards is not considered by the Army as delivery. The cars are delivered to the hold yards for the convenience of the complainant because placement disposition is not ready. The carriers have been giving the additional service of placing or spotting such cars as directed, at particular points on the piers, at warehouses, or at open storage areas, without charge therefor, under section 22 of the act. For the commercial shipper an additional charge would be made for such service.

Army locomotives assemble the empties and place them on assigned tracks for the Belt Line and the Virginian. This is done to speed up the return of empty cars and to assist the Army in obtaining appropriate release records for empty cars. When empties are found on a track which either the Belt Line or the Virginian has come in to set up, those empties will be pulled out by the rail locomotives and placed on the tracks assigned for empties, before placing the loaded cars. Army locomotives are never used to place commercial cars, either loaded or empty, or to move them from one track to another. When commercial cars are mixed with Army loaded cars, the Army locomotive will pull out such cars to get at the Army cars and will then return the commercial cars to their previous locations.

Two Army locomotives work on the base from 8 a. m. to 4:30 p. m., and one works from 4:30 p. m. to 1 a. m. Each Army engine crew is made up of an engineman, a conductor, and two brakemen. It is seldom that more than one railroad locomotive is working on the base at the same time as the Army locomotives. The crews try to work together so that there is a minimum of "standing by" required from either an Army or a railroad engine crew. One crew might be delayed from 15 to 20 minutes when both crews are working at the same time. A railroad crew brings in the cars to the yards and makes one placement thereafter of such cars as directed. All other placements and additional movements of Army cars are performed by Army engines and crews. When a railroad crew brings in a string of cars, some of which contain vehicles or pipe in open cars, those cars are placed on a different track from the boxcars. This service at the yard is considered classification and not placement.

The Navy has one engine and crew operating on the base. It goes into pier No. 2 yard and the outlying points such as
17 warehouses 6, 7, and 8 and the Navy leads, but does not reach pier No. 1 yard. The Navy is not a party to the complaint and its operations on the base will not be further considered.

Normally, the Belt Line makes two deliveries a day and the Virginian one. No particular tracks in the yards are set aside for commercial cars as there are so few of them. When a ship is being loaded with Army freight, the Army cars would be moved by an Army engine to one of the tracks on the apron of the pier. Cars brought by the railroad engines for the same ship would be moved to the track on the opposite side of the ship. There are two rail tracks to each berth on the pier and the ship can be loaded from both tracks simultaneously.

In the performance of services on the base for the Army, the Stevenson company makes use of Army trucks and flat beds for transferring cargo from one location to another, and of Army cranes for unloading into open storage. Such equipment is used under a contract with the Army, for which a charge is made.

Before reactivation of the Army Base on May 1, 1951, the Stevenson company, as agent for the rail carriers, acted as the terminal operator and ordered the placement of all cars whether they contained military or commercial freight. Since that date it has ordered the placement of only commercial cars and the Army yardmaster has taken over the placement of cars of military freight. He orders this service whether it is performed by the rail carriers or by Army engines and crews. The Stevenson company has continued to act as a terminal operator only as to commercial cars, and its services in connection with cars of military freight, including the unloading of such cars, have been those of a labor contractor. Compensation for unloading commercial cars and for wharfage is received by it from the rail carriers. For unloading military cars it is paid by the Army.

Army cargo for export, other than that for the Blue Jay project, is usually received by rail at the base and loaded out to vessels within a period of 2 weeks or 15 days. Free time for releasing rail cars is limited to 7 days. Only about 10 percent of the cars move through to the piers on placement orders without being stopped in the rail storage or hold yards. About 50 percent of the traffic remains in the cars in which it arrives at the base until it is eventually moved to the piers for unloading. Those cars are first delivered to the rail storage yards and later are given a further rail haul to the piers. The cargo which is not held in the cars is also given a second rail haul for unloading to either open ground storage or in warehouses. Such cargo is eventually reloaded and moved by Army power to the piers when vessel space is available. To avoid the

expense of cargo rehandling, cars are moved to the piers for unloading within the free time whenever possible. If the freight cannot be accommodated at the pier, such cars are generally unloaded to storage and the cars released within the free time.

Much of the cargo received at the base for the Blue Jay project must be stored awaiting movement by vessels during a limited shipping period. At the time of the hearing some of this cargo had been placed in open-ground storage extending from near the rail tracks for a distance of about 600 feet. Some of that cargo had been so stored for about 6 months and was expected to remain for some additional time before export movement.

18 Certain features of the Blue Jay project are handled by a firm of contractors known as the North Atlantic Constructors, under contract with the Army Engineers. A certain area of the base was set aside for their operation, which is highly secret and not described in detail. This phase of the program requires considerable processing of portions of the cargo before its release for loading to vessels for export. A small part of the operation was being conducted at the time of the hearing in warehouse No. 2.

Various items required for the Blue Jay project make it a continual operation. The shipping program for cargo through the base for 1951 was accomplished between the months of March and August of that year. Shortly after the close of that shipping season cars for the project began to arrive at the base for the 1952 shipping season.

Some of the cargo received at the base for projects other than Blue Jay also requires processing. For example, shipping pallets received disassembled are fabricated, and certain motor vehicles, not previously processed, are given exterior treatment with special liquids to prevent damage from sea water. All cargo is carefully checked to see that it has been properly prepared for export movement. Generally, only a few items are found to require additional crating to prevent damage on the ocean movement.

In general, shippers are required to load and consignees to unload carload freight for rail movement, under provisions of the governing tariffs. There are exceptions to that general rule in connection with freight moved by rail to or from a port. Railroads serving the port of Norfolk and other North Atlantic ports make provision in their tariffs for loading and unloading exports, imports, coastwise, and intercoastal freight, subject to certain limitations. Under the limitations on port traffic, rail carriers generally do not provide for loading or unloading of freight in open cars convenient to ship's tackle, bulk freight, lumber, articles weighing more than 3 tons, liquids in tank cars, shipments in road-haul movement at less than a certain rate per 100 pounds, shipments not actually handled by railroad employees or agents, and shipments moving over private piers or other

than railroad or public piers. These provisions apply to all shippers, private as well as the Government.

Line-haul rail carriers that do not reach the port of Norfolk do not participate in and have no control over the port services provided for in local terminal tariffs of railroads serving that port. Southern rail carriers reaching Norfolk generally make a charge for wharfage and handling services in addition to their line-haul rates. These carriers only absorb such charges to meet competition. Northern rail lines serving Norfolk generally provide for the absorption of wharfage and handling charges published in tariff I.C.C. No. 105 of the Belt Line.

On February 1, 1950, the Pennsylvania published provisions governing the application of wharfage and handling charges in its tariff I.C.C. No. 3007, which is typical of the tariffs published by most of the northern lines serving Norfolk. Rule 47 of item 305 of that tariff provides in part as follows:

Except as indicated * * * or otherwise provided in this tariff or in other tariffs lawfully on file with the Interstate Commerce Commission, wharfage and handling charges published in Norfolk and Portsmouth Belt Line Railroad Company Tariff 19 No. 6-J, I.C.C. 105, will be included in the freight rate to or from Norfolk, Va., on export, import, intercoastal and coastwise freight traffic, any quantity, other than traffic moving on joint through rates via regular coastwise lines operating to and from North Atlantic ports, subject to the following conditions:

(a) When the freight rate from Norfolk, Va., on inbound traffic or to Norfolk, Va., on outbound traffic is 19 cents per 100 pounds (Rule 53) or higher.

(b) When receipt from or delivery to vessel is in rail service over wharf properties owned or leased by Norfolk. Terminals Division of Stevenson & Young, Inc., and operated by Norfolk Terminals Division of Stevenson & Young, Inc., as a public terminal facility of the rail carriers.

(c) When Norfolk Terminals Division of Stevenson & Young, Inc., acting in the capacity of a public wharfinger, furnishes wharfage facilities and performs handling services for account of and as agent for the rail carriers on traffic that is neither consigned to or from nor owned or controlled by Norfolk Terminals Division of Stevenson & Young, Inc.

That rule also provides for the payment to the Norfolk Terminals Division of the Stevenson company, as the agent of the rail carrier or carriers, of 25 cents per ton for wharfage facilities furnished and 75 cents per ton for handling services per-

formed on the traffic described and conforming to the conditions specified, except as otherwise provided.

On January 1, 1952, rule B of the above tariff of the Pennsylvania, covering application of the rules on export freight, was changed, as marked by a symbol indicating neither increase nor reduction, to read as follows:

Except as otherwise provided herein, the rules shown in this tariff and as amended covering export freight, will apply on property for export to all destinations not located in the Continental United States of America (including Alaska), Dominion of Canada, Islands of Miquelon and St. Pierre (See note), Newfoundland (See note), *when exported direct from port stations named in this tariff or as amended, and will only apply, except as otherwise provided herein, on traffic which does not leave possession of the carriers and is delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port or after storage or transit has been accorded by the carriers under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply, which traffic is handled direct from carrier's stations to steamship docks and on which required proof of exportation is given.*

NOTE: Export rules shall apply to these points to the extent they are presently provided for on specific commodities as provided in the Agency and individual lines' tariffs applicable thereto.

20 The portion italicized was added to the rule on January 1, 1952.

In its brief, the complainant quotes the provisions of rule 47 of the Pennsylvania tariff set forth above, and takes the position that the defendants undertake by their tariffs to pay wharfage and to perform the loading and unloading services hereinbefore described, and that their failure and refusal to do so on the described military traffic is in violation of section 6 of the act. In support of its position, the complainant argues that prior to the restrictions upon the handling of export traffic at Norfolk provided by the foregoing language added to rule B on January 1, 1952, "the only restrictions were: (1) that the freight rate on the inbound rail movement of export traffic to Norfolk, Va., must be 19 cents per 100 pounds or higher; (2) that delivery to the vessel of export traffic, must be in rail service over wharf properties owned or leased by Norfolk Terminals, Division of Stevenson & Young, Inc., and operated by that company as a public terminal facility of the rail carriers; and (3) that Norfolk Terminals, Division of Stevenson

& Young, Inc., acting in its capacity as a public wharfinger, would furnish wharf facilities and perform handling services for account of and as agent for the rail carriers on traffic that was neither consigned to nor from, nor owned or controlled by said Norfolk Terminals, Division of Stevenson & Young, Inc."

The complainant argues further that: "These three elements fit the pattern of military export traffic flowing through Norfolk, Va., in precisely the same manner as they fit commercial traffic;" that "The Pennsylvania therefore failed to observe its own terminal tariff prior to January 1, 1952, when it refused to make an allowance of the unloading and wharfage charges to Stevenson & Young, Inc. on military export traffic handled through Norfolk, Va.;" and that "moreover, when the Pennsylvania undertook to publish the restrictive rule in Supplement No. 8 on January 1, 1952, it embarked upon a radical departure from the rule in effect on May 1, 1951, and the present rule is unjust and unreasonable and unduly discriminatory in violation of sections 1 and 2 of the Interstate Commerce Act."

The position of the complainant and its argument in support thereof are not in accord with the facts of record herein. The facts are that on May 1, 1951, and thereafter to the date of the hearing herein, only commercial traffic for export was handled over wharf properties leased by Norfolk Terminals, Division of Stevenson & Young, Inc., and operated by that company as a public terminal facility of the rail carriers on the Army Base at Norfolk. Wharf properties covered by lease or permit arrangements included any open and warehouse storage space and storage space at ship's berth designated in the lease or permit and made use of for commercial traffic awaiting loading to vessel. No military traffic was stored on or handled over any wharf property under lease or permit to the Stevenson company for commercial traffic at any time during that period. At all times during that period, military traffic was stored on and handled over wharf and other properties on the Army Base which were under the exclusive control of the Army.

In its exceptions the complainant argues that "To conclude that the portion of the wharf property described in the operating agreement between the Maritime Administration and Stevenson & Young, Inc., is 'leased' by that firm, and that the portion of the property used for military traffic is not 'leased' is a pure technicality." Aside from the complainant's conclusion that the plain

provisions of a lease or permit are "a pure technicality," the
21 record shows that commercial traffic could be handled only over the portions of the piers under lease or permit to the Stevenson company and that no military traffic was handled over those portions of the piers. On the contrary, all such export military traffic, after delivery to the base, was in the possession of and under

the exclusive control of the Army and was handled over wharf facilities under exclusive permit to the Army, and the unloading services were performed by labor furnished by the agent of the Army and not by an agent for the rail carriers.

The complainant has presented no evidence which warrants the conclusion that the Pennsylvania or any other terminal rail line serving Norfolk has failed to observe the provisions of its terminal tariffs in refusing to pay the Stevenson company for the services performed by it for the Army in connection with military shipments for export which moved over the Army's wharfage facilities not included in those under lease to that company.

In its brief and on oral argument, the complainant adhered to its position taken at the hearing that it does not in this proceeding assail the level of the line-haul rates applicable to its traffic to or from Norfolk, but assails only the failure of the defendants to absorb the wharfage and handling charges.

Railroads are not legally required to furnish piers, and most of the pier facilities at Norfolk are furnished by public pier operators. To place Norfolk on a competitive basis with other ports where railroads operate their own piers, the defendants serving Norfolk have provided wharf facilities and services by employing public terminal operators to act as their agents. These defendants, however, do not provide such facilities and services at Norfolk for shippers which have their own wharf facilities and take possession of their shipments when delivered by rail at such private pier facilities. They accord the complainant the same treatment as is accorded any other shipper that takes possession of its shipments when delivered by rail to its own private pier facilities.

Apparently, if the complainant had employed some firm other than the Stevenson company to perform its terminal service, its position would have been different, at least with respect to payment for unloading services. This is evident from the fact that no allowance is sought for unloading the traffic which the North Atlantic Constructors had unloaded and handled between May 1 and November 1, 1951. After that date the Stevenson company, under its contract with the complainant, unloaded and handled all Army traffic. As indicated, the North Atlantic Constructors is a firm of contractors working at the base on a highly secret project under contract with the Army. However, the complainant does seek an allowance for wharfage regardless of whether the traffic was unloaded by the North Atlantic Constructors or by the Stevenson company, on the ground that such an allowance is warranted for the use of the piers and warehouse facilities without regard to who unloaded the cars.

The complainant urges that there is no substantial difference between the handling of commercial traffic by the defendants and the

manner in which military traffic is handled. This is not supported by the record. Under its contract with the railroads the Stevenson company was paid 75 cents per ton for unloading cars of commercial freight. Under its contract with the Army that company was paid \$2.87 per ton for unloading cars of Army freight.

22 The unloading of cars of commercial freight only required the actual unloading of the cargo and checking thereof on a single sheet of paper, referred to as the "checker's tally sheet." The unloading of cars of Army freight required the handling of the cargo in a complicated manner. For example, at the time of the hearing the Army was receiving at the base about 1,500 cars a month, destined to the many units then maintained at different locations throughout the world. The cargo was the property of the individual segments of the Army, as indicated by the various emblems thereon. The Stevenson company was required to keep an inventory of all cargo for the Army as it was unloaded, so that the Army would know what was available for outbound movement. This required a vast amount of clerical work, superintendence, and administration, in addition to the actual unloading of the freight. Army freight required from 12 to 19 copies of the cargo document, in addition to the checker's tally sheet. These had to be so related as to make up the various lots for outbound movement, and indicate to some extent the vast problem of the Army in coordinating the supplies received in the various cars for shipment to its widespread forces.

The defendants serving Norfolk provide in their tariffs for the absorption of charges for wharfage and unloading of commercial traffic for which the Stevenson company, as agents for the carriers, furnishes the wharfage facilities and performs the unloading services. When that company unloads Army traffic it performs that service, not as agent for the carriers, but as agent for the complainant as a labor contractor. The Army freight is always handled over wharf facilities furnished by the complainant, and the Stevenson company is not entitled to payment by the carriers for wharfage facilities which it does not furnish. Likewise, when the North Atlantic Constructors performed the unloading of Army freight for the period May 1 to November 1, 1951, that firm was performing the service under contract for the complainant, and it handled the traffic over wharfage facilities furnished by the complainant. Both the Stevenson company and the North Atlantic Constructors, in performing those services, acted under their contracts with the complainant. The fact that the Stevenson company also had a contract with the carriers, under which it performed terminal services and furnished wharfage facilities as agent for the carriers, does not place that firm in any different position than the North Atlantic Constructors, which performed services for the complainant

under a contract but did not have a contract with the defendants for the performance of services as their agent. Neither firm would be entitled to compensation from the defendants for performing services for the Army or for wharfage facilities furnished by the complainant.

Although some of its traffic moves at lower rates under section 22 quotations, the complainant pays the full commercial export rates on most of its traffic moving over its piers at Norfolk, and it insists that the failure and refusal of the defendants to absorb the unloading and wharfage charges on its traffic to the same extent that these charges are absorbed on commercial traffic moving over the same piers was and is unreasonable. It must be borne in mind that a commercial shipper who takes possession of his traffic when delivered to him at port facilities over which the rail carrier has no control pays the domestic rates, which generally are on a higher level than the corresponding export rates. Such a shipper is in the same position in relation to the carrier transporting the traffic as is the complainant here. Nevertheless, contrary to the situation with respect to the commercial shipper, the complainant does not pay the domestic rates on this traffic passing through the Army

Base, but the lower export rates. This has come about through
23 a concession made by the east-coast railroads in December 1941 for war purposes, at the urgent request of the Secretaries of War and Navy, with respect to rates on military traffic. The concession was in the form of an amendment to the tariffs of the east-coast railroads which makes the export rates applicable on traffic moving over Army and Navy bases even though the complainant takes possession of the traffic. Such a practice is a departure from the usual application of export rates and supplants the domestic rates which the defendants publish to cover traffic that originates or terminates at the ports. The rail carriers, including the defendants here, gave up considerable revenue as a result of the rate reduction.

Evidence presented by the defendants supports their position that it is not unreasonable to refuse to extend wharfage and handling services to traffic handled over private piers when the shipper does not wish to use adequate facilities of the defendants. The defendants serving the Norfolk port area have had available port facilities more than ample to handle all the military traffic moving over the Army Base at Norfolk, at least on and since May 1, 1951. However, as previously indicated herein, the complainant by its own action has prevented defendants from performing the services here concerned.

The tariffs of defendant carriers, as amended since institution of litigation with respect to our prior proceeding, applies to all shippers alike, and deviation therefrom would be a violation of section

6(7) of the Interstate Commerce Act. As above noted such deviations with respect to application of tariffs governing shipments to and from Norfolk, other than domestic, have been made by defendants to the Government under provisions of section 22 of the act. That constitutes a preference to the Government, as compared to private shippers, in substantial reduction of the established tariff rate, which is just and lawful only because of section 22, which provides "that nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States." The record is clear that the reductions in charges, above noted as to Army shipments, were made at suggestion of public officials in order to apply to shipments which require different handling from those of private shippers, and to considerable extent, related to highly secret commodities which prohibited normal handling. There is no question that private shippers, under the same tariffs as here involved, could not legally be accorded reductions in the established rates and charges such as were accorded to the Government with respect to shipments involved in this proceeding. Nor would a private shipper be entitled to such an allowance as here claimed by complainant, covering wharfage and handling charges, absorbed under the tariffs concerned when performed by the carrier or its agent since the action of the shipper (here the Government) prevents rendition of the service by the carrier.

The allowances here claimed by complainant could not be made by the carriers under their tariffs, as those tariffs do not provide for carrier performance of the service, or payment of allowances to any shipper, under facts of this case, where the latter performs the services. The only authority under which such allowances could be paid to complainant, under the circumstances herein, is that in section 22. That section does not require, but only permits carriers to charge the Government less than the established rate. Therefore the only question here presented as to allowance payments, is whether or not defendants have been unjust or unreasonable in refusing to pay an allowance not required under their tariff or by law. For reasons stated defendants' refusal to make such allowances to complainant is a matter of carrier choice under section 22, does not violate section 6(1), and is not unjust and unreasonable, in the light of other substantial concessions extended by defendants to complainant.

The record is clear that unloading services on the instant traffic could have been and could be performed only at times designated by the complainant, and that the complainant did not and does not wish to use the defendants' pier facilities but for its own purposes used and will continue to use its own pier facilities. In these circumstances, the defendants were and are relieved of any obligation which may have existed to provide wharfage and handling

services on this traffic or to make an allowance therefor to the complainant. These principles are fully supported by many Commission decisions of years gone by and up to the present time.

The obligation of rail carriers, under section 1(3) of the act makes it their duty to perform interstate transportation at just and reasonable charges, which includes receipt and delivery of property transported. The problems involved in this statutory requirement have been many times resolved by this Commission, and so often been approved by the courts, as to provide firmly established principles governing the rendition of services, or payment of allowances in lieu thereof, by carriers concerned, such as here involved. The Commission and courts have consistently recognized this carrier obligation.

Whatever transportation service the law requires the carriers to supply they have the right to furnish. *Atchison T. & S. F. Ry. Co. v. United States*, 232 U.S. 199. When a carrier is prevented from performing the service by the action of the industry, and where the service of the carrier would not meet the needs and convenience of or be satisfactory to the industry, the carrier's duty to perform the service under the line haul rate is discharged, and there is no legal obligation upon it to make an allowance to the industry for performing the service. *Allowances to Gulf Sulphur Co.*, 96 I.C.C. 371. The demands upon a carrier which lawfully may be made are limited by its duty. *National Industrial Traffic League v. Aberdeen & R. R. Co.*, 61 I.C.C. 120, 123, *Great Northern Ry. v. Minnesota*, 238 U.S. 340, 346. Service over private tracks or plant-facility track by a common carrier subject to our jurisdiction is neither compelled nor prohibited under the Interstate Commerce Act, and to furnish or withhold it is the discretion of the carrier. *American Fuel Co. v. At. T. & S. F. Ry. Co.*, 123 I.C.C. 101, 112. No legal obligation rests upon a carrier to perform switching and spotting service solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them, but is not permitted to do so by the shipper. *Stewart Furnace Co. v. Pennsylvania R. Co.*, 68 I.C.C. 528. The above-established principles apply to the switching here involved.

It is the right of every shipper including the Government as here concerned, to prohibit a carrier from performing switching upon private tracks, even though the carrier might be willing and able to perform the service. When so prohibited by the shipper, as was here done by the Army, the carrier's obligation to perform the service is discharged, and the payment of allowances to the shipper for its performance of the service, in whole or in part, would be unlawful, except as a voluntary concession of the carriers to the Government under section 22. Even if the Army had permitted the carriers to perform the service here involved, they could not do so,

[File endorsement omitted]

In the District Court of the United States for the District of
Columbia

Civil Action No. 4001-54

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF
AMERICA, DEFENDANTS

ORDER DISMISSING COMPLAINT—June 28, 1955

This cause came on for hearing on the answer of the United States, The Interstate Commerce Commission and the intervening defendants, and the Court having the argument of counsel and being fully advised,

IT IS ORDERED that the complaint be and it is hereby dismissed.
Dated 6/28/55.

BAZELON, Circuit Judge dissents.

— — —, Circuit Judge,
*United States Court of Appeals
for the District of Columbia Circuit.*

DAVID A. PINE,
Judge,
*District Court of the
United States for the
District of Columbia.*

R. B. KEECH,
Judge,
*District Court of the
United States for the
District of Columbia.*

Approved as to form:

COLIN A. SMITH, Attorney, U. S.

SAMUEL R. HOWELL, Attorney, I. C. C.

in the circumstances existing, at their operating convenience,
25 in continuous movement, and without interruptions and interferences caused by shipper necessity and requirement. This would relieve the carriers of performing the service here involved under their line haul obligation. *United States v. American Sheet & Tin Plate Co.*, 301 U.S. 402.

We find that the failure and refusal of the defendant to absorb wharfage and handling costs on the complainant's traffic moving over its piers at Norfolk on and since May 1, 1951, is not shown to have subjected or to subject the complainant to the payment of rates and charges which were or are unjust, unreasonable, or otherwise unlawful. The complaint will be dismissed.

ALLDREDGE, *Chairman*, dissenting:

This complaint presents the same allegations on substantially the same commodities at the same location as were presented in *United States of America v. Aberdeen & R. R. Co.*, 263 I.C.C. 303, 264 I.C.C. 683 and 269 I.C.C. 141. That complaint was dismissed by a majority vote of this Commission, but a decision of the District Court of the District of Columbia sustaining the Commission's decision was reversed by the United States Court of Appeals for the District of Columbia, *United States v. Interstate Commerce Commission*, 198 Fed. (2d) 958. Certiorari was denied by the Supreme Court, and on January 12, 1953, we reopened that case for further consideration. Notwithstanding the courts' decisions, the majority here reaches the same conclusions as it reached in the prior case, explaining that the tariffs and physical operations, with respect to complainant's shipments, differ from those involved in the prior proceeding. I am unable to discover any substantial differences.

The Army Base piers were reactivated by the Government, effective May 1, 1951. For some time prior to that date, on both commercial and Government freight handled over those piers, the defendants treated them as public piers and absorbed charges for handling and wharfage or paid a terminal company, acting as their agent, for performing the services. The line-haul rates include delivery to shipside and, where, in the circumstances here disclosed, the shipper relieves the carrier of the burden of performing the services, there is ample basis for a finding that the charges are unjust and unreasonable. Some of the comments of the United States Court of Appeals in *United States v. Interstate Commerce Commission*, *supra*, are pertinent to this phase of the case.

In the report of the majority, it is indicated that certain principles pertaining to a carrier's duty to perform terminal services at a destination apply also to a carrier's duty to effect delivery to a connecting water carrier at intermediate points. The first situation has little bearing on the latter. Section 1(4) of the Interstate Commerce Act requires carriers by railroad to afford all reasonable,

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[File endorsement omitted]

In the United States District Court for the District of Columbia

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—
Filed August 26, 1955

I

Notice is hereby given that the United States of America, plaintiff in the above-entitled action, hereby appeals to the Supreme Court of the United States from the final judgment dismissing the complaint, seeking to set aside an order of the Interstate Commerce Commission, entered in this action on June 28, 1955.

This appeal is taken pursuant to 28 U.S.C. 1253 and 2101(b).

II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Petition to enjoin and set aside order of Interstate Commerce Commission;

(b) Answer of Interstate Commerce Commission;

56 (c) Answer of the United States of America;

(d) Motion of Pennsylvania Railroad Company, et al., to intervene as defendants:

(e) Order granting leave to intervene;

(f) Answer of defendants;

(g) Order convening three-judge court;

(h) Proceeding before Interstate Commerce Commission, in Docket No. 30939, consisting of the following:

(i) Complaint of the United States (omitting App. A)

(ii) Reporter's Transcript of Hearing, March 25, 26, 27, 1952, at Norfolk, Va.

(iii) Exhibits Nos. 1 to 54 inclusive

(iv) Examiner's proposed report;

(i) Opinion of the court, filed June 7, 1955;

(j) Order dismissing complaint, entered June 28, 1955;

(k) This notice of appeal.

III

Railroads serving North Atlantic ports have for many years published shipside rates on export freight, i.e., rates covering line-haul service and wharfage and handling services at the piers. Where the railroads do not have their own piers they provide the latter

proper and equal facilities for the interchange of traffic between their respective lines and connecting lines, both rail and water. See also *Myrick v. Michigan Central R. Co.*, 107 U.S. 102; *Texas & Pacific Ry. Co., v. Reiss*, 183 U.S. 621, and *Susskind v. Florida East Coast Ry. Co.*, 281 I.C.C. 431, 441.

I would find the assailed charges unjust and unreasonable to the extent they exceeded or exceed the charges which were formerly paid by the carriers to terminal companies.

26 Commissioner SPLAWN did not participate in the disposition of this proceeding.

Commissioner LEE, being necessarily absent, did not participate in the disposition of this proceeding.

27 APPENDIX C OF PETITION

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 16th day of November, A. D. 1953

No. 30939

UNITED STATES OF AMERICA

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY ET AL.

Upon consideration of (1) the record in the above-entitled proceeding, (2) petition of complainant, by the Judge Advocate General for the Secretary of the Army for reopening, reconsideration and reargument, and (3) the reply thereto by defendants; and it appearing that the reasons presented in support of such petition do not constitute good and sufficient cause for reopening the proceeding for reconsideration and reargument:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

GEORGE W. LAIRD,
Secretary.

(Seal.)

28 In the District Court of the United States for the District
of Columbia

[File endorsement omitted]

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed September
28, 1954

The Interstate Commerce Commission, defendant in the above-entitled action, hereinafter called the Commission, for answer to the bill of complaint, answers and says:

1. Answering paragraphs I to V, inclusive, of the complaint, the Commission admits the allegations thereof.

2. Answering paragraphs VI to IX, inclusive, the Commission admits and alleges that, on November 20, 1951, the plaintiff herein filed with it the complaint referred to in paragraph IX; that the proceeding thereby instituted was entitled Docket No. 30939, *United States of America v. Aberdeen & Rockfish Railroad Company et al.*; that the defendant carriers filed separate answers, denying generally the allegations of the complaint; that the State Corporation Commission of Virginia and Virginia Division of Ports intervened; that on March 25, 26 and 27, 1952, the proceeding was heard before a Commission hearing examiner at Norfolk, Va.; that at said hearings a large volume of evidence, both oral and documentary, was introduced; that following the hearings, a report by the
29 examiner recommending against the relief sought in the complaint, was issued and served on the parties; that exceptions to said report and briefs were filed and, on April 8, 1953, oral argument was presented to the entire Commission; that thereafter, June 1, 1953, the Commission issued its report and order, shown as Appendix B to the bill herein, whereby it found against the contentions of the complainant and dismissed the complaint; and that, subsequently, following petition by complainant and others for reargument and reconsideration, the Commission denied said petition by its order of November 16, 1953, shown as Appendix C to the bill herein.

Further answering paragraphs VI to IX, inclusive, of the bill of complaint, the Commission alleges that in said proceedings the parties thereto, including the plaintiff herein, were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said proceeding testimony and other evidence bearing upon the matters covered in said report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein by its

counsel; that in said proceedings, both orally and in briefs, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and served upon the parties to said proceedings, including plaintiff herein, its report and order of June 1, 1953; that said report and order included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its order of June 1, 1953 was based.

30 The Commission further alleges that the findings and conclusions of said report were and are, and that each of them was and is, fully supported by the evidence submitted in said proceedings as aforesaid. The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings and their respective counsel, including many of the matters covered by the allegations of the complaint herein."

The Commission further alleges that said report and order of June 1, 1953, were not made or entered either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support them; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each and all of the allegations to the contrary contained in the complaint. The Commission denies that its said order is unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in the complaint herein, or for any other reason or reasons whatever.

3. The Commission denies the allegations of invalidity set forth in paragraph X of the complaint herein.

4. Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of June 1, 1953.

31 All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By EDWARD M. REIDY,

General Counsel.

ISAAC K. HAY,

Assistant General Counsel.

32 Certificate of Mailing (omitted in printing).

33 In the United States District Court for the District of
Columbia

[File endorsement omitted]

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed October 8, 1954

Comes now the United States of America, as a defendant, and for answer to the Complaint filed herein says:

I

In accordance with a request made by this defendant's Department of the Army, a shipper of freight and user of transportation services of certain railroads, the United States of America filed a complaint against those railroads before the Interstate Commerce Commission, as authorized by Section 13 of the Interstate Commerce Act (49 U. S. C. 13). The Commission's order attacked in this action dismissed the complaint before the Commission, and the United States of America, being aggrieved at the dismissal of its complaint before the Commission, instituted the action in this Court to set aside and annul the Commission's order.

II

As provided by law (28 U. S. C., revised, § 2322) the United States is made a defendant in the above-captioned proceeding.

34-39

III

The Interstate Commerce Commission is a defendant in this action and it is authorized by law (28 U. S. C., revised, § 2323) to appear by its own attorneys and to defend its order without regard to the position which the United States, as a statutory defendant, may take in the action. Pursuant to this authority the Interstate Commerce Commission, by its counsel, has filed an answer to the Complaint in this action.

IV

Under these circumstances and in view of the fact that the Interstate Commerce Commission is afforded an opportunity to present its views through its own counsel, the United States of America, as

a statutory defendant, neither admits nor denies any of the allegations in the petition.

EDWARD P. HODGES,
W. WALLACE KIRKPATRICK,
Special Assistants to the Attorney General,
Department of Justice,
Washington, D. C.,
Attorneys for the United States of America.

CERTIFICATE OF SERVICE (omitted in Printing)

40 In the United States District Court for the District of
Columbia

[File endorsement omitted]

[Title omitted]

ORDER GRANTING LEAVE TO PENNSYLVANIA RAILROAD COMPANY,
ET AL. TO INTERVENE AS DEFENDANTS—December 9, 1954

This motion was filed on behalf of The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk and Western Railway Company, pursuant to Rule 24(a) of the Rules of Civil Procedure, for leave to intervene as defendants herein and the parties hereto having consented to the motion as indicated by their signatures to this order, it is

ORDERED, that The Pennsylvania Railroad Company, The Virginian Railway Company, Southern Railway Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Norfolk and Western Railway Company be and they are hereby granted leave to intervene herein as defendants.

ALEXANDER HOLTZOFF,
Judge.

December 9, 1954.

41-42 JAMES E. KILDAY,
COLIN A. SMITH,
Special Assistants to the Attorney General,
U. S. Department of Justice,
Attorneys for Plaintiff,
United States of America.

W. WALLACE KIRKPATRICK,
*Special Assistant to the Attorney General,
U. S. Department of Justice,
Attorney for Defendant,
United States of America.*

I. K. HAY,
*Asst. General Counsel,
Interstate Commerce Commission,
Attorney for Defendant,
Interstate Commerce Commission.*

43

[File endorsement omitted]

In the District Court of the United States for the
District of Columbia

Civil Action No. 4001-54

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF AMERICA,
DEFENDANTS

THE PENNSYLVANIA RAILROAD COMPANY, THE VIRGINIAN RAILWAY
COMPANY, SOUTHERN RAILWAY COMPANY, ATLANTIC COAST LINE
RAILROAD COMPANY, SEABOARD AIR LINE RAILROAD COMPANY, NOR-
FOLK & WESTERN RAILWAY COMPANY, INTERVENERS.

INTERVENERS' ANSWER TO COMPLAINT—Filed December 15, 1954

Now comes The Pennsylvania Railroad Company, the Virginian
Railway Company, Southern Railway Company, Atlantic Coast
Line Railroad Company, Seaboard Air Line Railroad Company,
and Norfolk & Western Railway Company, referred to hereafter as
the "defendant interveners" and answers the specific allegations as
follows:

1. Defendant interveners admit the allegations of Paragraphs
I, II, III, IV and V of the complaint.

2. Defendant interveners admit the allegations contained in
Paragraph VI of the complaint except that they allege that the
general practices of the railroad as alleged in the said paragraph
were and are subject to the limitations shown in the record upon
review in this matter.

3. Defendant interveners deny the allegations contained in the
first paragraph of Paragraph VII of the complaint except
that they admit that subject to the limitations shown in the
record, defendant interveners have performed wharfage and

44

handling services on the piers and have compensated their agent for performing such service on behalf of the defendant interveners.

Defendant interveners admit the allegations contained in the second paragraph of Paragraph VII of the complaint but deny that petitioner has been required to provide piers without compensation therefor and to bear the expense of handling service on its export traffic. Defendant interveners deny that the railroads have continued to charge the full line-haul shipside rates on the petitioners traffic, and further deny that defendant interveners have refused to perform services as provided in the applicable tariffs on file at the Interstate Commerce Commission.

4. Defendant interveners deny the first paragraph of Paragraph VIII of the complaint except that they admit that during the time the pier facilities were leased and operated by private corporation the handling of traffic between rail cars and pier floors was performed by the terminal operator with civilian labor. Defendant interveners further admit that after the Army took possession of certain Army Base pier facilities on May 1, 1951, Stevenson was engaged by the Army to perform service during a portion of the period involved in the proceedings.

Defendant interveners deny the allegations contained in the second paragraph of Paragraph VIII of the complaint except that they admit that the defendant interveners refused to pay allowances to the Army.

5. Defendant interveners admit the allegations contained in Paragraph IX of the complaint except that they deny that the complaint filed with the Interstate Commerce Commission sought the
45 performance of services as distinguished from the payment of allowances.

6. Defendant interveners deny the allegations in Paragraph X of the complaint.

WINDSOR F. COUSINS,
Suburban Station Building,
Philadelphia 4, Pennsylvania.

HUGH B. COX,
701 Union Trust Building,
Washington 5, D. C.

Attorneys for The Pennsylvania Railroad Company.

MARTIN A. MEYER, JR.,
1511 K Street, N. W.,
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Attorney for The Virginian Railway Company.

A. J. DIXON,
15th and K Streets, N. W.,
Washington, D. C.

WILLIAM B. JONES,
Union Trust Building,
Washington 5, D.C.
Attorneys for Southern Railway Company.
 R. B. GWATHMEY,

Wilmington,
North Carolina,
Attorney for Atlantic Coast Line Railroad Company.

46

CHARLES P. REYNOLDS,
Shoreham Building,
Washington, D. C.,
Attorney for Seaboard Air Line Railroad Company.

JOHN P. FISHWICK,
Norfolk & Western Railway Company,
Norfolk, Virginia,
Attorney for Norfolk & Western Railway Company.

47 Certificate of Service (omitted in Printing).

48 [File endorsement omitted]

In the United States District Court for the District of
 Columbia

Civil Action 4001-54

UNITED STATES OF AMERICA, PLAINTIFF

vs.

INTERSTATE COMMERCE COMMISSION, ET AL., DEFENDANTS

Before BAZELON, Circuit Judge, PINE and KEECH, District Judges,
 holding a statutory three-judge court.

OPINION OF THE COURT

This is an action by the United States, through its Department of the Army, against the Interstate Commerce Commission and the United States. It seeks to set aside the Commission's order of June 1, 1953, in a proceeding known as *United States of America v. Aberdeen & Rockfish Railroad Company, et al.*, Docket No. 30939, reported at 289 I.C.C. 49. In that order the Commission dismissed a complaint in which the United States sought a determination that the refusal of the railroads named defendants therein to pay an allowance for wharfage and handling on military traffic passing through Army Base Piers in Norfolk, Virginia, on and after May 1, 1951, constitutes a violation of the Interstate Commerce Act. It

also sought a cease and desist order against such practices in the future. The railroads named defendants in the Commission proceeding have been permitted to intervene herein.

49 Upon consideration of the record herein, briefs, and argument of counsel, we conclude that the Commission's order of June 1, 1953, is supported by adequate findings; that these findings, in turn, are supported by substantial evidence in the record, particularly the testimony of plaintiff's own witnesses; that the record amply supports the finding that plaintiff has not been accorded different treatment from any other shipper under the same or similar circumstances and has not been subjected to any unlawful discrimination; that the findings form a rational basis for the Commission's ultimate conclusion that failure and refusal of the defendants to absorb wharfage and handling costs on the complainant's traffic moving over its piers at Norfolk on and since May 1, 1951, had not been shown to have subjected or to subject the complainant to the payment of rates and charges which were or are unjust, unreasonable, or otherwise unlawful. We further find that the Commission did not fail to consider material evidence of record; that the Commission did not misapply or act contrary to any principle of law; and therefore the Commission's order was not arbitrary or capricious or contrary to law. Detailed and step-by-step discussion and analysis of the bases for these conclusions would be repetitive and would needlessly burden an already overburdened record, and no useful purpose would be served thereby.

The opinion of the United States Court of Appeals for the District of Columbia in *United States v. Interstate Commerce Commission, et al.*, 91 U.S. App. D.C. 178, 198 F. 2d 958 (1952),
50 in a prior proceeding involving wharfage and handling costs at the same Army Base Piers during World War II, upon which plaintiff heavily relies, does not impel reversal of the Commission's order in this case. The tariffs here under consideration,¹ which are the sole basis of plaintiff's action, are materially different. They specifically and clearly define the conditions under which wharfage and handling are included in the freight rates. The shipments of the United States here in question do not conform to those conditions. Hence, under such circumstances, the United States, like any other shipper similarly situated, is not entitled to such terminal services or any allowance therefor. The record before the Commission and the Commission's findings in the instant case

¹ The Pennsylvania Railroad tariff as to wharfage and handling charges at the Norfolk Terminals Division of Stevenson & Young, Inc., which plaintiff cites as typical of the tariffs here in issue, appears in Exhibit 9 before the Commission, Part 16, pp. 1-3, both as it existed prior to January 1, 1952, and as amended on that date.

are not inadequate, as they were held to be in the earlier proceeding,² and the facts herein are vitally different.³ As shown by the Commission's report of June 1, 1953, the Commission in this proceeding took careful notice of the Court's opinion in the prior case and conformed to the legal principles therein stated, insofar as they were applicable to the facts of the proceeding before it.

For the foregoing reasons, we hold that the order of the Interstate Commerce Commission must be sustained and the complaint herein dismissed.

DAVID A. PINE,

District Judge.

RICHMOND B. KEECH,

District Judge.

BAZELON, Circuit Judge, dissents.

June 6, 1955.

² On remand of the World War II case, the Commission took additional evidence, reexamined the entire record in the light of the Court of Appeals' opinion, and on January 17, 1955, rendered a report making detailed findings of fact and adhering to the conclusion that there had been no unlawful discrimination against the United States.

³ See Commission's report, 289 I.C.C. 49, 51.

52 **BAZELON, Circuit Judge, dissenting:** I conclude that the decision of our Court of Appeals in *United States v. Interstate Commerce Commission*¹ is controlling here and requires reversal of the Commission's order dismissing the complaint of the United States. The United States alleged, in pertinent part: under the export tariffs involved here, the railroads were obligated to furnish wharfage and handling services; when the railroad declined to perform these services on traffic moving over Army Base Piers at Norfolk, Virginia, the Army itself did so; and the United States was therefore entitled to an allowance for what the railroads would have had to pay for these services. Refusal of the railroads to make such allowance, says the United States, subjected it to the payment of unjust and unreasonable rates in violation of the Interstate Commerce Act.²

Like Chairman Alldredge of the Interstate Commerce Commission, who dissented from the order we now review, I, too, "am unable to discover any substantial differences" between the tariffs and facts of record here, and those covered by the Court of Appeals' decision. There it was pointed out that "even assuming that performance by the carriers would not have been "practical"—that no arrangement satisfactory to the Army could have been worked out—the carrier's inability to perform would not of itself release them from their tariff obligation."³ That obligation includes

53 wharfage and handling. Here, as there, the Army's "action, taken in an emergency to assure a smooth flow of war material, [did not] increase the cost to the railroads or inconvenience them in any way. Moreover, had [the public wharfinger continued to act on behalf of the railroads], the Army could still have controlled the piers and the shipments passing over them by the use of military priorities and routings. See Interstate Commerce Act § 6(8), as amended, 49 U.S.C.A. § 6(8). . . . All the Government now asks is that the railroads pay it for wharfage and handling what they would have paid the [public wharfinger for such services]. . . ." ⁴

DAVID L. BAZELON,
Circuit Judge,
United States Court of Appeals.

¹ 91 U.S. App. D.C. 178, 198 F. 2d 958 (1952).

² 24 Stat. 379 (1887), as amended, 49 U.S.C. §§ 1(5), 1(6), 2, 3(1), 6(7) (1952).

³ 91 S.S. App. D.C. at 190, 198 F. 2d at 969.

⁴ 91 U.S. App. D.C. at 191, 198 F. 2d at 970-71.

services through terminal operators. The Government owns piers at Norfolk, Virginia, which have long been utilized by the railroads for handling a great bulk of rail-water traffic. Immediately prior to 1951, these piers had been leased to and operated by a terminal company. In that year, because of the Korean emergency, the Government cancelled the lease and resumed control of the piers. It retained the former lessee to continue to perform wharfage and handling operations. It also permitted, to the extent consistent with military requirements, the movement of civilian freight over the piers. The railroads continued to pay for wharfage and handling service performed in connection with civilian freight moved over the piers, but refused to do so in connection with military freight. The following question is presented:

Whether the railroads' failure to perform or pay for wharfage and handling services (for which they were compensated under the shipside rates) in connection with the movement of military freight over the Government piers, while continuing to pay for such services on commercial traffic moving over the same piers (as well as commercial traffic moving over other piers served by the railroads in the port of Norfolk), subjected the Government to unjust discrimination, constituted an unreasonable practice and departed from the carriers' obligation to facilitate military traffic, all in violation of the Interstate Commerce Act.

DANIEL M. FRIEDMAN,
COLIN A. SMITH,
FREDERICA BRENNEMAN,
Attorneys for the United States,
Address: Department of Justice,
Washington 25, D. C.

58-60 PROOF OF SERVICE (omitted in printing)

61 Clerk's certificate to foregoing transcript omitted in printing.

62 Supreme Court of the United States

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—January 9, 1956

Appeal from the United States Court of Appeals for the District of Columbia Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

January 9, 1956.

63 Before the Interstate Commerce Commission

Docket No. 30939

UNITED STATES OF AMERICA, COMPLAINANT

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL., DEFENDANTS

COMPLAINT—Filed November 20, 1951

Comes now Frank Pace, Jr., Secretary of the Army, through his counsel, The Judge Advocate General, on behalf of the United States of America, and for complaint respectfully shows:

I

Complainant is represented in this proceeding by the Secretary of the Army pursuant to authority conferred by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and Statement of Areas of Understanding Between Department of Defense and General Services Administration, 15 F. R. 6938.

II

64 That each of the defendants named in Appendix "A" attached hereto is a common carrier by railroad engaged in the transportation of property in interstate or foreign commerce, and as such is subject to the provisions of the Interstate Commerce Act.

III

That in the performance of its military functions, complainant ships large quantities of goods over the lines of defendants from points in the United States to Norfolk, Virginia, for export by vessel to foreign countries, or in intercoastal and coastwise trade, and, in like manner, ships from Norfolk, Virginia, traffic which has been received by vessel from foreign countries, or in intercoastal and coastwise traffic. The charges on such traffic have been and will continue to be borne by complainant. All types of commodities are embraced in such transportation.

IV

That for many years, defendants have, by appropriate tariffs published rates on export, import, intercoastal, and coastwise traffic which apply-shipside and under which defendants absorb in the line-haul rates the cost of wharfage and handling and perform such

other service, or make allowance therefor, as is necessary to place shipments on piers or wharves within reach of ship's tackle, available for loading in vessels, on export traffic, and loaded on cars from shipside, on import traffic. The same practice is followed

65 on intercoastal and coastwise traffic, whether inbound or outbound. These provisions are contained in class and commodity rate tariffs which, in addition to providing that the rates on export traffic are shipside, authorize the application of individual line terminal tariffs by so-called omnibus rule. Such terminal line tariffs, in turn provide for shipside application and allowances of one cent per hundred pounds for wharfage and three cents per hundred pounds for handling. By operation of the Ex Parte 162 increase, these allowances have become $1\frac{1}{4}$ and $3\frac{3}{4}$ cents, respectively, or a total of 5 cents per hundred pounds.

V

Since 1 April 1947, by specific tariff provision, defendants have paid the aforesaid wharfage and handling allowance to Norfolk Terminals Divisions of Stevenson & Young, Inc., the operator of Army Base Piers Nos. 1 and 2 and are currently paying such allowance. Since 1 May 1951, however, defendants have paid such allowance only on so-called commercial cargo but defendants refuse to pay the allowances on the large volume of export and import military traffic which moves over the same piers and is handled by the said Norfolk Terminals Division of Stevenson & Young, Inc. In view of their refusal, complainant is required to assume this additional cost, even though the allowance is granted on non-military traffic moving over these and other piers in the port area.

66

VI

That illustrative tariffs, containing class and commodity rates applying to and from Norfolk, Virginia, on export, import, intercoastal and coastwise traffic are as follows:

Central Freight Association Tariff No. 490-B, I. C. C. 3642 of B. T. Jones, Agent.

Central Freight Association Tariff No. 218-N, I. C. C. 3758 of B. T. Jones and L. C. Schuldt, Agents.

Southern Freight Tariff Bureau Tariff No. 705-I, I. C. C. 1138 of C. A. Spaninger, Agent.

Western Trunk Line Tariff No. 329-J, I. C. C. A-3745 of L. E. Kipp, Agent.

Trunk Line Territory Tariff No. 107-C, I. C. C. A-767 of W. S. Curlett, and C. W. Boin, Agents.

The terminal tariffs containing the absorption provisions are as follows:

Atlantic Coast Line Tariff No. 91-4-B, I. C. C. No. 3175.
Norfolk & Western Tariff No. GF 23 F, I. C. C. No. 9179.
Norfolk Southern Tariff FTD 338, I. C. C. No. A-1148.
Pennsylvania Tariff 1378-J, I. C. C. No. 3007.
Seaboard Airline Tariff 34-H, I. C. C. A-8146.
Southern Railway Port Terminal Tariff, I. C. C. No. A-11065.
Virginian Tariff 1813-L, I. C. C. 2258.
Norfolk & Portsmouth Belt Tariff 6-J, I. C. C. 105.

VII

That the failure, neglect and refusal of the defendants to grant an allowance to the United States or its agent, or otherwise to absorb the cost of wharfage and handling on export, import, intercoastal and coastwise traffic of the United States moving over Army Base Piers Nos. 1 and 2 departs from the general practice and custom of the defendants. Complainant is, therefore, required to pay rates which include the cost of such wharfage and handling but at the same time provide its own facilities and services. Complainant is accordingly subjected to greater charges than are demanded and collected from other shippers for like services in the transportation of like traffic under similar conditions.

VIII

That by reason of the foregoing, the United States has been, is, and will be subjected to the payment of rates and charges for transportation which were, when exacted, are, and will be unjust and unreasonable and in violation of Sections 1, 2, 3, and 6 of the Interstate Commerce Act.

IX

Therefore, complainant prays that defendants be required to answer the charges herein; that after due hearing and investigation, the Commission:

(1) Enter an order requiring defendants to cease and desist from the aforesaid violations of said act which have occurred since May 1951;

(2) find that the refusal of defendants to pay the published allowance for wharfage and handling to Norfolk Terminal Division of Stevenson & Young, Inc., or to complainant or its agent, on military traffic has been, is, and will be in violation of the said Interstate Commerce Act; and

(3) enter such order and further orders as the Commission may consider proper in the premises.

Dated at Washington, D. C., this 19th day of November 1951.

E. M. BRANNON,
Major General, USA,
The Judge Advocate General
for The Secretary of the Army,
By ROBERT W. BROWN,
Brigadier General, USA,
Assistant Judge Advocate General,
Rm. 3-E-336, The Pentagon,
Washington 25, D. C.

RAYMOND KREBILL,
R. E. COSTELLO, 1st Lt., JAGC,
Office of the Judge Advocate General,
Of Counsel.

1. Before the Interstate Commerce Commission

Docket No. 30939

In the Matter of UNITED STATES OF AMERICA

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL

Conference Room, Port Headquarters Building, Hampton Roads
Port of Embarkation, Army Base, Norfolk, Virginia, Tuesday,
March 25, 1952.

Met, pursuant to notice, at 9:30 o'clock a.m.

Before: SAMUEL R. DIAMONDSON, Examiner.

APPEARANCES:

Raymond Krebill, Office of the Judge Advocate General, Room
3-B-320, The Pentagon, Washington, D. C., appearing for the Sec-
retary of the Army, Complainant.

Windsor F. Cousins, 1740 Broad Street Station Building, Phila-
delphia, Pa., appearing for the Pennsylvania Railroad Co.

Martin A. Meyer, Jr., 1110 Investment Building, Washington 5,
D. C., appearing for The Virginia Railway Company.

Charles P. Reynolds, 1110 Shoreham Building, Washington, D. C.,
appearing for Atlantic Coast Line Railroad Company and Seaboard
Air Line Railroad Company.

R. B. Clayton and J. P. Fishwick, 106 North Jefferson Street,

Roanoke, Virginia, appearing for Norfolk and Western Railway Company.

A. J. Dixon, 15th and K Streets, Northwest, Washington, D. C., appearing for the Southern Railway Company.

John W. Hanifin, 1500 First National Bank Building, Richmond, Virginia, appearing for the Chesapeake and Ohio Railway Company.

William C. Seibert, State Office Building, Richmond, Virginia, appearing for State Corporation Commission of Virginia.

H. V. C. Wade, 1203 Royster Building, Norfolk, Virginia, appearing for Virginia Division of Ports.

R. E. Krieger, 115 West Tazewell Street, Norfolk, Virginia, appearing for the A&D Railway.

Walter C. Plunkett, Terminal Building, Norfolk, Virginia, appearing for The Virginian Railway Company.

4

PROCEEDINGS

Exam. DIAMONDSON: The hearing will come to order.

The Interstate Commerce Commission has set for hearing at this time and place Docket No. 30939, United States of America versus Aberdeen and Rockfish Railroad Company, et al.

In announcing your appearances, please state whether you are authorized to practice before the Commission, and if not, the official capacity in which you are appearing.

Who appears for complainants?

Mr. KREBILL: Raymond Krebill, Office of the Judge Advocate General, Room 3-B-320, Pentagon, Washington, D. C. I am appearing for the Secretary of the Army. I am admitted to practice before the Commission.

Exam. DIAMONDSON: Who appears for defendants?

Mr. COUSINS: Windsor F. Cousins for the Pennsylvania Railroad Company. I am admitted to practice.

Mr. MEYER: Martin A. Meyer, Jr., 1110 Investment Building, Washington, D. C., appearing for The Virginian Railway Company. I am an attorney and admitted to practice.

Mr. REYNOLDS: Charles P. Reynolds, 1110 Shoreham Building, Washington, D. C., appearing for the Atlantic Coast Line Railroad and the Seaboard Airline Railroad. I have been admitted to practice.

Mr. FISHWICK: R. B. Clayton and J. P. Fishwick, 106 North Jefferson Street, Roanoke, Virginia, appearing on behalf of the Norfolk and Western Railway Company. We are admitted to practice before the Commission.

Mr. DIXON: A. J. Dixon, appearing for the Southern Railway Company. I have been admitted to practice.

Mr. HANIFIN: John W. Hanifin, appearing for the Chesapeake

and Ohio Railway Company. I am an attorney and admitted to practice before the Commission.

Exam. DIAMONDSON: Are there any interveners?

Mr. SEIBERT: My name is William C. Seibert. I appear for the State Corporation Commission of Virginia. I have a petition of intervention. I would like to file, if the Examiner please. I am admitted to practice.

Exam. DIAMONDSON: Are you appearing in support of or in opposition to the complaint?

Mr. SEIBERT: I am appearing, if the Examiner please, to take whatever position the State of Virginia may have in the case.

> Mr. WADE: My name is H. V. C. Wade of the Virginia Division of Ports, intervenor in like manner with Mr. Seibert, being a State agency, and our position at the moment is as expressed by him. I am also admitted to practice before the Commission.

Exam. DIAMONDSON: Are there any additional appearances?

Mr. KRIEGER: R. E. Krieger, Norfolk, Virginia, appearing for the A&D Railway, defendant.

Mr. PLUNKETT: Walter C. Plunkett, appearing for The Virginian Railway Company.

6 Exam. DIAMONDSON: Let the record show that the petitions of intervention have been distributed to the parties. They will be received.

By complaint filed November 20, 1951, it is alleged that defendants' failure and refusal to grant an allowance to complainant, or otherwise to absorb the cost of wharfage and handling charges to complainant or its agent, since May 1, 1951, on export, import, intercoastal and coastwise traffic, moving over Army Base Piers 1 and 2, subjects complainant to the payment of rates and charges for transportation which were, are, and for the future will be unjust and unreasonable, and in violation of Sections 1, 2, 3 and 6 of the Interstate Commerce Act.

Is that the statement of the issues substantially correct?

Mr. KREBILL: Yes.

Exam. DIAMONDSON: Does this complaint contemplate reparations?

Mr. KREBILL: It contemplates an administrative finding, at least, back to May 1, 1951.

Exam. DIAMONDSON: Complainant may proceed.

E. B. GRAY was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. KREBILL:

Q. You have been sworn?

A. Yes.

Q. Please state your name and official position.

7 A. I am Colonel E. B. Gray. Since 2 March 1952 I have been Deputy Port Commander, Hampton Roads Port of Embarkation. I was Chief, Commercial Traffic Service Division, Office Chief of Transportation, from July 26, 1947 to February 1, 1952.

Q. State your education and experience in the field of transportation.

A. I have been connected with transportation in the military service since 1938. At that time I was assistant to the Chief, Commercial Traffic Service, Office of the Quartermaster General, U. S. Army. From 1939 to 1940, I was attached to the Western Military Bureau of the western carriers. From 1940 to early 1942, I was Transportation Officer of the New York Port of Embarkation. 1942 to 1944, I commanded the Second Transportation Zone with headquarters in New York City. I then went overseas and returned in 1947. From July, 1947, to February, 1952, I was Chief of the Commercial Traffic Service Division, Office of the Chief of Transportation, in Washington.

First I would like to mention a fact that is already known, and that is here, at Norfolk, we have what is called the Army Base Piers 1 and 2, also known as the Maritime Administration terminal. These are the same piers that were described in the several reports of the Interstate Commerce Commission, Docket No. 29117. This was a complaint initiated by the Department of the Army, then the War Department, through the Attorney General, covering the period June, 1942, through May, 1946.

8 Generally speaking, the physical layout of the terminal is the same today as it was in the Commission's report, and witnesses which will follow me will describe in more detail the layout and actual operations as they exist today, and in the recent past.

The piers are owned, of course, by the United States Government, and have been under the direct management of the U. S. Maritime Administration, which leased the piers, and portions of the surrounding property to Stevenson & Young, Inc.

On April 30, 1951, the lease was revoked and the Army itself took possession under a permit granted by the Maritime Administration. A sub-permit, however, was made at the same time which granted certain portions of the base back to the Maritime Administration.

This sub-permit was made back to the Maritime Administration by the Department of the Army, and it was under this permit that the Maritime Administration is presently in the terminal, and that Stevenson & Young, Inc., are presently operating as public terminal operators at the Army Base.

Because of this, and the fact that I had knowledge of the previous dispute over the wharfage and handling allowances, I held a conference in Washington with the representatives of the carriers which served the port of Norfolk.

I later exchanged letters with these carriers regarding the subject, and attempted to seek a basis which was both acceptable to them and to the Army, by which the Army would receive the same full shipside service afforded commercial traffic over the Army Base piers, but the carriers refused to consider any of the proposals.

Q. Have you prepared an exhibit comprising the correspondence you have just mentioned?

A. I have.

Mr. KREBILL: Mr. Examiner, I would like to have this exhibit, comprising the correspondence which the witness has just mentioned, marked for identification.

Exam. DIAMONDSON: It will be identified as Exhibit No. 1.

(Complainant's Exhibit No. 1, Witness Gray, was marked for identification.)

By Mr. KREBILL:

Q. Colonel Gray, I notice in the first letter in the exhibit, dated 21 March 1951, that reference is made to operations of the port facilities to be performed by a contractor. Can you tell for the record who that contractor is?

A. The contractor serving the Army here?

Q. Yes, sir.

A. Stevenson & Young, Inc.

Q. Was that contemplated at the time when the letter I have just mentioned was written?

A. The actual contractor wasn't contemplated. It was not known at the time I wrote the letter who would be the contractor serving them.

Q. Is Stevenson & Young the same terminal operator that was here before that time?

10 A. He is.

Q. In the light of these circumstances, what is your conclusion?

A. Well, my conclusion was that I should recommend, and I did recommend, that this complaint be filed. It was my personal conviction.

tion, and it is the official position of the Department of the Army, that the refusal of the carriers to accord wharfage and handling allowances on military traffic is wholly unreasonable and grossly discriminatory.

Whether this is a violation of the Interstate Commerce Act is, of course, for the Commission to decide, and I make this statement from the standpoint of the practical transportation aspects, and not as a lawyer. This opinion of mine is based on the essential fact, which will be established by subsequent witnesses, that the carriers now grant and have for some time been granting the wharfage and handling allowance on commercial traffic moving over these piers, and at this moment, when a car of commercial traffic moves over these piers, and is unloaded by Stevenson & Young, Inc., the railroads pay the allowance to that corporation, but on the military traffic moving through the Army Base, under almost identical circumstances, being handled by the same concern, they will not make the allowance. To me, this simply means that the Government is being discriminated against.

11 Mr. KREBILL: Mr. Examiner, that is all I have on direct examination of this witness.

Exam. DIAMONDSON: You may cross examine.

Mr. COUSINS: Mr. Examiner, defendants would like an opportunity to look over this exhibit before they cross examine. I wonder if we could defer Colonel Gray's cross examination until later in the day?

Exam. DIAMONDSON: We could take a short recess if you want to.

Mr. COUSINS: We could probably look this over during the noon recess, and shorten the cross examination.

Exam. DIAMONDSON: Will the witness be available later in the afternoon?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: All right. You may be excused temporarily.

(Witness temporarily excused.)

Mr. KREBILL: I wonder if we could have just a very short recess while we are getting our next witness. I expected this witness to be on the stand a little longer than he was.

Exam. DIAMONDSON: Very well. We will take a short recess.

(Short recess taken.)

Exam. DIAMONDSON: We will come to order, please.

THOMAS J. WEED was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. KREBILL:

Q. Please state your name and address.

12 A. Thomas J. Weed, Colonel, Transportation Corps, United States Army, Hampton Roads Port of Embarkation, Norfolk, Virginia.

Q. What is your assignment and describe briefly your duties and responsibilities?

A. Commanding Officer, Hampton Roads Port of Embarkation, Norfolk, Virginia. My duties and responsibilities are to command the Hampton Roads Port of Embarkation and all troops assigned to the Port; to formulate basic policy and supervise the overall activities of the Port, including the reception, transportation, embarkation and debarkation of troops and other personnel, their equipment and personal effects; also the receipt, storage, preparation for shipment, loading and transshipment of all supplies moving through the Port to overseas and Zone of Interior destinations. I have been in this assignment since the activation of the Port, 1 May 1951.

Q. Will you state your education and experience in the field of transportation?

A. My education consists of 14 years in various schools and colleges. My experience consists of 35 years of military service, most of which has been in the supervision of transportation operations as they pertain to the Army. I have been Commanding Officer of Ports of Embarkation and Ports of Debarkation, and concerned in the management of various installations where railway terminals were operated.

Q. Describe, in a general way, the Army Base facilities.

13 A. The Army Base facilities, also known as the Maritime Administration Terminal, consists of two large piers well equipped with railroad trackage; an LST Ramp, eight brick and concrete single story warehouses; approximately 2,750,000 square feet of open storage area, and rail yards which can accommodate 1800 cars. The port facilities are also known as Norfolk Terminals, Division of Stevenson & Young, Inc.

Q. What kinds of freight are handled through the port facilities at the Army Base?

A. Cargo pertaining to Engineer Special Projects comprising chiefly construction materials and equipment, piling, lumber, cement, steel girders and like articles; Military Troop Support cargo, comprising subsistence, other than cold storage items, packaged petroleum products (except gasoline), clothing and equipage, signal

equipment, engineer equipment, including bridging, and construction materials; vehicles of all types and ordnance; Mutual Defense Assistance Program cargo comprising items similar to those previously mentioned with emphasis on vehicles and ordnance. Commercial cargo is also regularly transshipped through this terminal.

Q. In what manner and by whom are these port facilities operated at this time?

A. The property known as the Army Base or the Norfolk Terminals for operational purposes embraces three elements. Part of the property has been permitted to the Navy for their purposes.

14 The Maritime Administration, by sub-permit occupies there and operates in certain areas of the property and, by their agreement with the firm of Stevenson & Young, Inc., who serve as their terminal operators, a commercial transshipping operation is conducted in the property.

Mr. KREBILL: At this time, I would like to offer for identification an exhibit comprising of a number of documents as shown on the cover sheet of the exhibit.

Exam. DIAMONDSON: The exhibit may be identified as Exhibit No. 2.

(Complainant's Exhibit No. 2, Witness Weed, was marked for identification.)

By Mr. KREBILL:

Q. When, and in what manner, did the Department of the Army acquire possession of the piers?

A. At midnight, 30 April 1951, by permit from the Maritime Administration of the Department of Commerce. At the same time, by a sub-permit from the Department of the Army, the Maritime Administration was granted the use and occupancy of certain portions of the property for commercial and other operations. Copies of the permit and sub-permit are reproduced beginning at page 3 and 10 of my exhibits. In order to avoid disturbing the arrangements or commitments made by the Maritime Administration and their authorized agents, berthing space was made available at Pier No. 1 to the Maritime Administration for commercial operations.

In conjunction therewith warehouse space in Warehouse No. 15 3 was also made available. These commitments concerning the handling of commercial traffic are outlined in my exhibit beginning at page 13.

Q. Will you state fully why it became necessary for the Army to acquire possession of these port facilities?

A. At the outset, it should be understood that the Ports of Embarkation are vital links in the logistical supply pipe line which extends from Military Depots in the United States to Military

forces and supply bases overseas. In the latter part of the year 1950, it became evident to the Department of the Army that an additional port of embarkation would have to be activated on the East Coast of the United States primarily to handle an Engineer special project, then pending.

The volume of cargo required in connection with this project (this is a highly classified project and details will not be mentioned here), it was estimated would entail the movement of over 250,000 measurement tons of cargo and some 6,000 or 7,000 persons. To handle this volume of shipping it was estimated that over 70 vessels of different kinds would be required.

A survey was made of all ocean terminal transshipping facilities on the East Coast. It was determined that the facility known as the Army Base in Norfolk was the most adaptable. This facility will be described in detail elsewhere.

Briefly, it has two large piers. It also contains a number of single story warehouses (dimensions are shown elsewhere).

16 In addition, and of greater importance in the handling of bulky construction equipment is a large open storage area immediately adjacent to the piers and warehouses. Neither the New York Port of Embarkation nor any other like facility on the East Coast was found to be as well equipped to accomplish the then pending transshipping program. Therefore, in pursuance of orders issued by The Secretary of the Army, the Hampton Roads Port of Embarkation was reactivated 1 May 1951, with headquarters and most of its transshipping operations to be conducted within the Army Base, Norfolk, Virginia.

The accumulation of cargo for the Engineer special project proceeded rapidly and between the months of March and August, 1951, the program was accomplished for that year. In addition, to relieve some congestion developing at other ports entailed by the disturbed world situation, the Hampton Roads Port of Embarkation was required to transship other military support cargo, including two full sized Infantry Divisions with their equipment.

Events arising subsequent to December, 1950, in which the Hampton Roads Port of Embarkation has played an important part, have clearly demonstrated the necessity for the reactivation of the Hampton Roads Port of Embarkation in accordance with the decision and with the order of the Secretary of the Army. The basic purpose is to assist in furnishing logistical support to all U. S.

17 Military Forces and other types of military assistance commitments overseas.

Q. Why couldn't this mission be accomplished just as well if a commercial operator were in possession of the piers?

A. In answer to this question it should be borne in mind that this is a Government owned facility. As a result of Executive

Order executed in 1924, the Maritime Administration (then known as United States Shipping Board), which is a Government Agency, had custody of the property. However, that agency does not operate terminals.

For operational purposes they retain the services of lessees which, in the case of Norfolk, was the firm of Stevenson & Young.

To the representatives of the Department of the Army, it did not appear sound nor logical to operate a Port of Embarkation on government property and function it through a lessee of that government property. Had this been done, it would have meant that funds appropriated by the Congress for the movement of military supplies and equipment would have been disbursed to a lessee, who in turn, under the terms of his contract with the Maritime Administration would have paid that administration part of those funds. The logical method, therefore, was to have the Maritime Administration permit the property required for military traffic to the Department of the Army for management and maintenance purposes, but there is no interference with the handling by

18 the railroads, through their contractors, of either military or commercial shipments which would not exist regardless of whether or not the piers were in the possession of an independent terminal operator such as Stevenson & Young. In any use of this property, one of the principal factors to be considered either by the Maritime Administration or the Defense Department was that an engineering survey made in the early part of 1951, indicated, that owing to deterioration, a large program of rehabilitation of the property was essential.

The engineer estimate covered such major items as dredging the area adjacent to the piers to accommodate deep draft vessels; repairs to decking of the piers; replacement of sheet piling beneath the south side of Pier 1, the deteriorated condition of which was weakening this structure; replacement of thousands of ties under railroad tracks; repairs to electric lines, water system, storm sewers, sanitary sewers (connecting up the latter with the new city disposal plant); repairs to deteriorated transshipping sheds, including doors and windows; also general repairs to all warehouse buildings, roadways and bulkheading along the waterfront.

The cost of this rehabilitation project was estimated to be in excess of \$3,000,000. It was not apparent that either the Maritime Administration or the Terminal Operators were able to assume the cost of this rehabilitation program. It was assumed by the Army, and the cost has already exceeded \$3,000,000 and work is
19 still in progress.

In addition, owing to the complex nature of Ports of Embarkation, the highly classified conditions imposed regarding many items comprising military cargo moving through these facili-

ties enroute overseas, and the controls required by Military authority over commodities pertaining to the various technical services of the Army, including checking the different items comprising the overall cargo load, experience has clearly demonstrated that these focal shipping points must be operated by personnel of the military service, including civilian employees of the Government.

Only such personnel has the requisite training in the intricate nomenclature pertaining to the items and to the documentation required in connection with the proper loading and dispatching of vessels.

A vast amount of pre-stowage planning of vessels in a port of embarkation must precede the labor of actual loading. Precise knowledge of overseas requirements must be available. Therefore, controls required to be exercised of all shipments must be absolute. These begin when freight is ordered shipped from points of origin and continue until the various commodities reach their final destination overseas.

The Government must be assured of security of all the materials whether classified Secret or otherwise. Therefore, it is necessary

20 to organize a port of embarkation in such a manner that safeguards will be provided, egress and ingress of unauthorized persons will be prevented, pilferage will be eliminated, protection against deterioration or destruction by fire will be assured, and above all, management will be positive.

In addition, the General Staff, Department of the Army, in Washington, and overseas commanders must be furnished at all times complete information regarding the status of shipments, and the diversions of different types of cargo, when necessary, must be accomplished without any possibility of mis-routing or loss.

When military support cargo enters the logistical pipeline for eventual delivery to overseas commands it moves on pre-arranged schedules and in accordance with the requirements of combat forces and other elements operating overseas. Experience gained by the Military Establishment in two great world wars, also prior to World War I, in the war with Spain, has clearly indicated that it is impracticable and unrealistic to expect the complex administrative procedures and problems encountered in military bases, commonly known as ports of embarkation, to be coped with and adequately solved under any type of agreement in the nature of a contract with purely commercial concerns who are experienced only with the conventional type of commercial terminal operations and ordinary shipping problems related solely to industrial requirements

21 of our economy.

In the case of the Hampton Roads Port of Embarkation, from my own experience with numbers types of organizational set-ups utilized in the operation of bases of this kind, I feel that,

perhaps the optimum has been reached in the use of commercial concerns to perform major functions in a waterfront terminal as for example, stevedoring, which means the actual stowing of cargo in ships, and/or accomplishing other terminal services such as the unloading of railway cars, including the transfer of cargo within a port, principally from warehouses and open storage areas to the piers and bulkheads for pick-up and stowing in vessels by stevedore contractors.

Although the explanation I have made may make it seem that the handling of military freight is quite complex, what I have said means simply that from a rehabilitation and maintenance viewpoint it was deemed necessary for the Army to assume responsibility for the pier property, that control of military traffic at the port is necessary to keep the supply pipeline functioning smoothly, but insofar as the physical handling of railroad cars and the loading and unloading of box car freight is concerned there is practically no difference in the handling of military and commercial freight.

Q. Does the Navy have possession or does it operate a part of the piers?

22 A. Yes, the Navy has possession of one half of Pier No. 2 and the adjoining bulkhead. The U. S. Navy obtained the aforementioned berths by permit from the U. S. Maritime Administration.

Q. Have you prepared as an exhibit a drawing showing, among other things, the piers, warehouses, open storage space, and railroad facilities?

A. I have.

Mr. KREBILL: I would like to have this drawing marked as an exhibit, Mr. Examiner.

Exam. DIAMONDSON: It may be identified as Exhibit No. 3.

(Complainant's Exhibit No. 3, 'Witness' Weed, was marked for identification.)

By Mr. KREBILL:

Q. Departing from the prepared statement a little bit, will you explain just briefly what this drawing shows?

A. The drawing I have had prepared shows the two piers known as No. 1 and No. 2, and the five warehouses that are on that part of the property that was permitted to the Department of the Army. It also shows the open storage areas, and the railway tracks that connect the facility with the areas out at what is known as Quartermaster Junction—junction of this trackage with the Virginian Railway.

Q. Now, will you describe in detail the Army Base facilities at

23 Norfolk. How many piers are there and what are their dimensions?

A. The Army Base has two large piers, each 1,328 feet long. One of them, Pier No. 1, is 300 feet wide and the other, Pier 2, 329 feet. These piers are well equipped with railroad trackage. Three depressed tracks run throughout the length of the inside center of each of the piers. There are two tracks on each of the four pier aprons.

Q. Are there warehouses on the piers?

A. There are covered storage areas on both piers which are used for the temporary storage and assembly of cargo while awaiting vessel arrival.

Q. Is there any limitation as to the tonnage of vessels that can be accommodated?

A. Piers 1 and 2 can accommodate vessels drawing 35 feet or less when fully loaded. This is sufficient depth for the loading of all cargo vessels entering this port. Alongside the bulkheads and LST ramp, the depth of water governs the tonnage of the vessels which these berths can accommodate.

Q. How many vessels can be berthed at the piers and bulkheads at one time?

A. Eight to ten ocean-going vessels can be berthed at the piers and bulkheads at one time.

Q. Can the loading or unloading of that many vessels be performed simultaneously?

A. Yes.

24 Q. Will you describe the warehouse and open storage facilities at the Army Base?

A. In all, there are eight brick and concrete single story warehouses in the installation. These buildings are divided by fire walls into 90 compartments 140 feet by 160 feet, with floor space measuring over 2,000,000 square feet. All of these structures are served by depressed tracks to aprons on one side and street level doors on the opposite side. The open storage areas consist of approximately 2,750,000 square feet which are readily accessible to both rail or motorized equipment.

Q. Also describe the rail facilities (tracks and rolling stock) on the Army Base and on the piers.

A. There are eight rail lines that enter the City of Norfolk. However, only one of these lines enters the Army Base, the Virginian Railway Company.

The traffic for all other seven railroads is brought into the Army Base by the Norfolk and Portsmouth Belt Line Railroad. Some 28 miles of trackage is in the base on which 1,000 cars can be accommodated with an additional 800 spotted alongside the warehouses or in the piers and on the aprons. The Army has 35 flat

cars: Two 65-ton diesel locomotives and one 45-ton diesel locomotive.

Mr. COUSINS: Excuse me a minute. Has this map been offered?

Exam. DIAMONDSON: Yes, identified as Exhibit No. 3.

Mr. COUSINS: May I ask a question for clarification?

25 Exam. DIAMONDSON: Certainly.

Mr. COUSINS: Exhibit 3 does not show all of the warehouses and all of the tracks that you have just described, does it?

The WITNESS: This has been identified as Exhibit 3?

Mr. COUSINS: Yes.

The WITNESS: No, because the entire installation comprises that part of the property that was also permitted to the Navy.

Mr. COUSINS: Does it show all of the tracks that are in the area portrayed on the map?

The WITNESS: I don't understand your question.

Mr. COUSINS: In that portion of the base that is outlined on this map, have you shown all of the railroad tracks that there are there?

The WITNESS: All that I know of, yes, sir.

Mr. COUSINS: All right. Thank you.

Exam. DIAMONDSON: How many tracks are there on the base?

The WITNESS: Well, in different areas they may be described as marshalling yards—there you find quite a few tracks—then they narrow down to just one track serving alongside of a warehouse, another serving—two on each apron pier, and so on, so that they vary from one to as high as about twenty.

Exam. DIAMONDSON: Is the base enclosed by a fence?

The WITNESS: Yes.

Exam. DIAMONDSON: How many tracks are there actually inside the fence?

26 The WITNESS: I would have to count them. I don't quite understand that question. You see, these tracks are main lead, you know, that comes down to the yard here, and then widen out.

Exam. DIAMONDSON: I just want to know how many individual tracks there are inside the fence.

Mr. KREBILL: Do you have reference to the number of miles of trackage inside the fence?

Exam. DIAMONDSON: The number of individual tracks, and the total mileage of those tracks is what I want.

The WITNESS: I think that could be answered by stating there are two leads into the property.

Exam. DIAMONDSON: And they divide?

The WITNESS: They divide after they get inside the property

into what we term marshalling yards, these yards such as you see out front of the building here.

Exam. DIAMONDSON: Yes, I understand that. I was wondering how many individual tracks there are, if you know. If you don't, you can furnish that later.

The WITNESS: I can furnish that later, yes.

Exam. DIAMONDSON: Proceed.

Mr. COUSINS: Mr. Examiner, I do want to cross examine, but the point that bothers me was that the Colonel spoke about open storage areas of considerable extent which were accessible to rail and motorized equipment, and on his Exhibit 3 I was just wondering where the tracks were that lead to that open storage
27 yard.

The WITNESS: You see, there is open storage alongside of the tracks all the way from the gate reaching down to the piers.

Exam. DIAMONDSON: Where is that gate?

The WITNESS: Immediately adjacent to the warehouses.

Exam. DIAMONDSON: Where is the gate you refer to?

The WITNESS: The gate is at Hampton Boulevard.

Mr. COUSINS: The right-hand side of the map?

The WITNESS: Yes, it is right here (indicating). Hampton Boulevard is the gate to the base. Then there is other property that is a part of the base on the other side of the track. That is not enclosed. You asked me if there was a fence around the base. It is only around that part of the base west of Hampton Boulevard.

Exam. DIAMONDSON: Are there two leads through that gate?

The WITNESS: It is double track.

Exam. DIAMONDSON: Does all the rail inside that gate belong to the Army?

The WITNESS: Yes, and all that across the Hampton Boulevard, in that property which is commonly known as QM Junction, this junction out to the right there. That is government property.

Exam. DIAMONDSON: That is all government rails and government property?

The WITNESS: Yes, that is all government property.

Exam. DIAMONDSON: Proceed.

28

By Mr. KREBILL:

Q. Before you fold that map up, I would like to ask you just a few questions in view of the questions that have come up. Now the Army property is outlined by the brown line, is it not, on Exhibit No. 3, extending all the way out to the point which is designated as Virginian Railway, at the extreme right?

A. Yes.

Q. And that is Army property all the way?

A. Yes.

Q. On both sides of Hampton Boulevard?

A. Yes, that is property that was permitted to the Department of the Army.

Q. Yes.

A. But inside of that is some property that is permitted back to the Maritime Administration.

Q. The part that is permitted back to the Maritime Administration is shown in red on the map, is it not?

A. It is shown both in green and red, in the case of the warehouse sections.

Q. Yes, green and red.

A. The sections are green by the Maritime Administration. And additionally the ones marked pink, including a berthing space on Pier 1, was sub-permitted back to the Maritime Administration, or simply permitted back to them under the terms of the sub-permit.

29 Q. Now, with respect to the number of rail lines, actually inside of the area permitted to the Department of the Army, they are shown on this map, are they not?

A. Yes.

Q. And each line represents one track?

A. Each thin line represents a track, yes.

Q. Now, in the classification yard—

A. Not one rail track, but—it would be two rails to make the track.

Q. Two rails to make the track?

A. That is the way—this is what I wasn't quite clear on a moment ago, how many tracks they were talking about.

Q. Now, in the so-called classification, or marshalling yards, that is on the other side of Hampton Boulevard—that is, on the other side of where the warehouses are located—east of Hampton Boulevard?

A. East of Hampton Boulevard.

Q. I count 19 lines there.

A. In that first yard?

Q. Yes. Would you say that is about correct?

A. I could say that is about correct, yes.

Q. And in front of the building here, warehouse number four, there are six parallel tracks; are there not?

A. Yes.

Mr. COUSINS: Excuse me, just a minute.

30 Mr. KREBILL: Yes, sir.

Mr. COUSINS: When you said in front, do you mean between Warehouse 3 and Warehouse 4 or something else?

The WITNESS: Warehouse 3.

Mr. COUSINS: I can't read those.

Exam. DIAMONDSON: Are those six tracks that you just referred to depressed tracks?

The WITNESS: Not these, no. They are right on the surface.

Exam. DIAMONDSON: Note the tracks between Warehouse 3 and Warehouse 4?

The WITNESS: They are what we call flush.

Exam. DIAMONDSON: Where are the depressed tracks?

The WITNESS: If you stepped over between Warehouses 2 and 3, you would find the tracks depressed.

Exam. DIAMONDSON: There are two depressed tracks there; is that right?

The WITNESS: There are more than two in there. There are two serving each warehouse there. The floor level of the warehouse is equal to the floor of the car. It is depressed just enough to accomplish that.

By Mr. KREBILL:

Q. The 28 miles of track that you referred to, does that include track mileage on the Navy portion of the property?

A. To the best of my knowledge and belief, that includes the tracks that run on the Navy side also.

31 Q. Would you have any estimate as to how much mileage is on the Navy side?

A. I think about 20 per cent of the trackage is on the Navy side—about a fifth of it.

Exam. DIAMONDSON: Do you perform the switching for the Navy also?

The WITNESS: They have a diesel locomotive. We don't use any Army locomotives to do their switching for them.

Exam. DIAMONDSON: Does that 28 miles of track include all the tracks owned by the Army in this case, or only the trackage within the fence?

The WITNESS: It includes all of that that was permitted to the Army that I know of.

Exam. DIAMONDSON: I would like to know how many miles of track you have got inside the fence.

The WITNESS: I think we would have to rechart that and refigure it.

Mr. KREBILL: Mr. Examiner, when you said inside the fence, do you have reference to the part west of Hampton Boulevard?

Examiner DIAMONDSON: That is correct.

Mr. KREBILL: You see, the Army property that is the base prop-

erty goes all the way over to the point at the extreme right hand of the drawing, which is on the other side of the road.

32 Exam. DIAMONDSON: I understand that. I would like to know how many miles of tracks you have beginning at the so-called north gate at Hampton Boulevard, between that point and the piers.

The WITNESS: We can have that refigured.

Mr. KREBILL: The witness says we can furnish that.

Exam. DIAMONDSON: All right, if you furnish it before the hearing is over, I would like to have the total mileage and the number of tracks, beginning at that point—we will call it the north gate—to and including the piers.

Mr. KREBILL: I was just wondering, though, if that includes all of the information that you would want. Because the classification yard, for the base operation, is on the other side of the boulevard.

Exam. DIAMONDSON: It should be divided up to show the total mileage and the number of tracks east and west of the north gate.

The WITNESS: And would you want information regarding the other lead into the property? There is another rail lead into the property besides the one that crosses Hampton Boulevard.

Exam. DIAMONDSON: Are you going to describe that?

The WITNESS: It is shown as a cut-off on this drawing. It is shown right in here (indicating).

Exam. DIAMONDSON: Just describe it for the record.

33 The WITNESS: It will be noted that on this drawing, marked Norfolk and Portsmouth Belt Line Railroad, is what is termed technically by the railway lines as a lead, which extends across the Navy part of the property known as the Army Base, and in a northerly direction through a gate that is in the fence, on that side of the property, that is, the Navy side of the property, and then extends on in an easterly direction and becomes merged and part of the rail line known as the Norfolk and Portsmouth Belt Line Railroad, and strings of cars are frequently switched into the base via that lead.

Exam. DIAMONDSON: By the Belt Railroad?

The WITNESS: Oh, yes.

Exam. DIAMONDSON: Where is that gate? Will you describe it more accurately?

The WITNESS: That gate is on the north side of that part of the property known as the Army Base—it is on the north side of the Navy portion of the property.

Exam. DIAMONDSON: Will you show me that on the map?

The WITNESS: The gate itself—we will have to show you a map that includes the entire installation to get that gate.

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record. Go ahead, please.

Mr. KREBILL: Mr. Examiner, I believe you just referred to the gate at Hampton Boulevard as the north gate, and I would like to correct that as being a different gate.

By Mr. KREBILL:

Q. Colonel Weed, will you explain where the north gate is
34 and where the other gate is?

A. Well, the east gate to the property is the one at Hampton Boulevard. It is known as the main entrance to the Army Base, for all types of traffic. That is the east gate. The north gate accommodates only the rail line that enters the property from that side, and it is at the extreme north perimeter of the property.

Exam. DIAMONDSON: Mr. Krebill, are we going to have a witness who will describe the actual switching operations?

Mr. KREBILL: Yes, sir.

I presume, in connection with the additional information which you have requested on the track mileages, that that information is being gathered now, and if we don't have it before this witness is excused; we will recall the witness.

Exam. DIAMONDSON: That will be all right.

By Mr. KREBILL:

Q. Describe generally the port operation in the handling of military export and import traffic.

A. Cargo for export for the Army and Air Forces is ordered into the port, received, arranged for shipment and outloaded. Inbound cargo is offloaded, checked, and dispatched inland. The handling of Navy cargo is a function of the U. S. Navy representatives at the base. I am not in a position to state how their operations are conducted. Other witnesses probably will describe the port operations in greater detail.

Q. What space and facilities are devoted to this freight?

35 A. The space and facilities devoted to the handling of

Army and Air Force cargo are those areas previously indicated as not having been sub-permitted back to the Maritime Administration or permitted to the Navy. As previously stated, one half of Pier No. 2 has been permitted to the Navy by the Maritime Administration. I am not aware of, nor have I received any information as to whether or not Navy traffic is involved in this case.

Q. You have mentioned a handling service performed by Stevenson & Young. Does the Government contract with Stevenson & Young to perform any services on the piers?

A. Yes, the Army had two contracts with Stevenson & Young for the period 1 May 1950 to 31 December 1951, and also has two contracts with that firm for the year 1952. Contracts expiring 31 December 1951 were for Terminal Operations and Intransit Storage Services; also for Stevedore Checking and Clerking Services; those for 1952 are for Stevedore Checking and Clerking Services; also for Car, Truck and Barge Loading and Terminal Operations Services.

Excerpts of these contracts are included in my exhibit beginning at pages 20, 25, 29 and 34. These excerpts show the scope of the services covered by the contracts and insofar as terminal operations and car loading and unloading services are concerned I wish to draw particular attention to the fact that Contract No. DA 44-046-TC-6 (page 20) and Contract No. DA 44-046-TC-42 (page 29)

36 provide that all income derived from sources other than the Government for cargo handling shall be for the account of the Contractor and collected by it, but the Contractor shall deduct the amounts so collected from the invoices it renders to the Government. See Article 1 (aa) and Article 1 (z), respectively, of these two contracts on pages 23, 24, 32 and 33 of Exhibit No. 2.

Q. How long have such contracts with Stevenson & Young been in effect?

A. The contracts for the period through 31 December 1951, were in effect from 1 May 1951. The contracts for 1952 became effective 1 January 1952.

Q. Why were such contracts entered into?

A. Such contracts were entered into for the purpose of having car unloading and other related services performed by Commercial Terminal Operators who had the status and the experience, also the people and the equipment to operate the terminal. With specific reference to that portion of the contract which relates to car, barge and truck unloading, such services were required in connection with, not only the unloading of cars for which the railroads were not fulfilling their unloading obligations, but for similar service on freight which does not qualify for the unloading service or allowance.

Q. Is commercial, as distinguished from military, traffic handled over the Army Base piers?

37 A. Yes.

Q. Explain what you mean by commercial traffic.

A. By commercial traffic is meant freight that is shipped by a commercial consignor to a commercial consignee for commercial use and is handled by commercial operators. In other words, the military has no responsibility in connection with the movement of such cargo.

Q. Are any restrictions imposed by the Army on such commercial traffic?

A. None except those which come within the provisions of laws and regulations relating to hazardous items.

Exam. DIAMONDSON: Do you restrict the places at the piers at which commercial vessels can berth?

The WITNESS: We permit to the Maritime Administration, for operation by Stevenson and Young, such berths as we may have open. In other words, not immediately used. We have them on a more extended permit for one berth on the Army side. Then they get other berthing space as they require.

Q. Does Stevenson and Young have full access to all portions of the piers?

A. Yes, Stevenson and Young perform handling of freight via all portions of the piers, and such handling is the same regardless of whether it is military or commercial freight.

Mr. KREBILL: That is all the direct testimony I have of this witness at this time, until he is able to obtain the additional
38 information which you have requested, Mr. Examiner.

Exam. DIAMONDSON: Do commercial vessels load on the same side as military vessels?

The WITNESS: The same side of a pier?

Exam. DIAMONDSON: Yes.

The WITNESS: Yes.

Exam. DIAMONDSON: You may cross examine.

Mr. COUSINS: Mr. Examiner, I am willing to begin the cross examination of Colonel Weed, but I will have to reserve the right to continue it at a later time when I have had a chance to read this 37-page exhibit. Apart from that, I am willing to start now, if he will be available in case we want to question him further when we have looked at the exhibit.)

Exam. DIAMONDSON: Proceed with the cross examination.

CROSS EXAMINATION.

By Mr. COUSINS:

Q. Colonel, I think you have pointed out that there are three different parties or interests that now occupy some portion of the Army Base under permits from the Maritime Administration of the Commerce Department; is that correct?

A. There are two that operate under permits from the Maritime Administration.

Q. To wit?

A. The Navy and the Army.

Q. Do you take the position that the commercial operator,
39 Stevenson and Young, is conducting a commercial operation on the base only, by virtue of a permit from the Army?

A. Stevenson and Young have a contract with the Maritime Administration, to conduct the commercial operation.

Q. That is, they have a permit from the Maritime Administration to use certain space for a commercial operation?

A. We sub-permitted some of the property back to the Maritime Administration, and they in turn made a contract with Stevenson and Young to operate as their agents, via that property.

Q. All right. Then don't we come to my original question, that there are three different agencies occupying parts of this base for three different purposes?

A. Well, there are three elements operating in the base.

Q. One the Navy, one the Army, and one a commercial operator?

A. There are three elements operating in the base, one the Navy, one the Army, and the other the Maritime Administration, and they operate via the Terminal operator, Stevenson and Young.

Q. You take the position that the Maritime Administration itself is conducting a commercial operation on the pier?

A. They are really not operators. They conduct their operation through an agent, Stevenson and Young are agents of theirs by contract.

Q. On your map, Exhibit 3, what is the difference in the use made of the space colored in red, and that colored in green? The one shows Stevenson and Young, and the other the Maritime Administration.

A. The Maritime Administration have for their own purposes a number of sections of Warehouse 5. They conduct those sections in an entirely different operation from that which is conducted by Stevenson and Young. The Maritime Administration in those sections of Warehouse No. 5, store items they require for the husbanding of ships. If they break a ship out of lay-up, they equip it largely from the stocks they have, which are Maritime Administration stocks. They have nothing to do with the transshipping operation through the terminal.

Q. But freight comes into that portion of the warehouse by railroad, does it?

A. Well, railroad tracks serve that portion, yes.

Q. Who handles the freight that is stored in the Maritime—

A. If you want to know how the Maritime Administration operates, I suggest you ask them to tell you, because I don't operate inside of those particular sections.

Q. You have nothing to do with it?

A. I am not operating inside of those sections.

Q. You are not operating inside the sections colored in red either, are you—Stevenson and Young?

A. Not all of them.

Q. Any of them?

A. Not the port. There is one small part of one of them
41 there I think is represented to one of our stevedoring contractors. He operates both commercially and for us as a contractor in loading ships. But it is not my operation, as a strictly army transshipping operation.

Exam. DIAMONDSON: But your Army power takes the traffic to those warehouses, does it not?

The WITNESS: The commercial traffic?

Exam. DIAMONDSON: The traffic going to the Maritime warehouse, or to Stevenson and Young. How does it get there? Doesn't Army power take it there?

The WITNESS: We have nothing to do with switching cars or handling trucks that accommodate the traffic that pertains strictly to those particular areas in this base.

Exam. DIAMONDSON: How does it get there if it doesn't move there by truck?

The WITNESS: Well, Stevenson and Young can tell you directly how it gets to their places, and the Maritime Administration can tell you how it gets to theirs. We don't handle it. It moves in there by way of railway carriers, trucking concerns, and by their own vehicles. I observed them around those places. Since I have nothing to do with the dispatching or handling of those, nor those particular sections, as an operational responsibility, I am not able to testify directly as to how they are consigned or reconsigned or how they warehouse their property.

42 Exam. DIAMONDSON: Does traffic move there by rail?

The WITNESS: Oh, yes, all those warehouses are served by rail.

Exam. DIAMONDSON: Proceed; Mr. Cousins.

By Mr. COUSINS:

Q. The last thing you said in your direct testimony, Colonel, was that the handling is the same, regardless of whether it is military or commercial traffic.

Now, how do you draw that conclusion if you can't tell us anything about the manner in which commercial traffic is handled?

A. Only from my own observation. What I have been handling is physical handling—trucking, handling with stevedore laborers, handling via van or trucks, or railway car, generally reaches those places just about the same.

Exam. DIAMONDSON: Does Stevenson and Young do the actual stevedoring?

The WITNESS: No. Stevenson and Young are terminal operators. The stevedoring, as we distinguish then between that particular

operation on the water front, and the other operation such as warehousing and loading and unloading railway cars, that is handled by stevedoring companies. The stevedoring companies are engaged by us under contract to perform stevedoring work for the three concerns—stevedoring company, Old Dominion, and Atlantic and Gulf.

43 Exam. DIAMONDSON: Do they have a contractual arrangement with the Army?

The WITNESS: They have a contract with us. And separately from that, they work for commercial carriers, and handle their stevedoring, but we don't supervise that particular work.

By Mr. COUSINS:

Q. Does the Army interfere in any way there with the commercial operation of Stevenson and Young?

A. In no way that I know of.

Q. When you said that you didn't know whether the Navy freight was involved in this case. Did you mean to say that the Navy freight is not involved in this case?

A. I don't know anything about it, so therefore I have no statement to make with reference to it. It is not my property, it is theirs. If you want to know, I would suggest you ask them.

Q. You do not represent the Navy in this case?

A. Not in any way, shape or form.

Mr. COUSINS: I ask if that is true also of Mr. Krebill?

Mr. KREBILL: That is true.

Mr. COUSINS: Then the Navy is not in this case?

Mr. KREBILL: No, sir. Of course, I might add in that statement that any finding of the Commission which would affect the Army probably the Navy would make the same claim.

Mr. COUSINS: You are not stating that as a representative of the Navy, though?

Mr. KREBILL: No, sir.

Mr. COUSINS: All right.

44 By Mr. COUSINS:

Q. Colonel, you explained why the Army thought it necessary to take over the base, but it isn't entirely clear to me what you do now that could not have been done under the prior commercial operation of the base.

A. Well, to clear it up on one point, we didn't take over the base. We only took over certain parts of it.

Q. Restrict your answer to that part you took over.

A. That part which was permitted to us, for our operational purposes, it being government-owned property, we felt that we wanted

to operate it by our supervisory personnel, but by the commercial operations insofar as they could reach agreements with us.

Now the "why" of our taking it over, for those purposes, or our coming in and occupying a part of it for those purposes, was due to the accumulation of cargo, and then what would be the foreseen load, the load that we could foresee, and our method of coming in and supervising it was to have absolute controls over the movement into the port of cargo coming from depots and consignors so that there would be no congestion, in that way disturbing our economy and that of the country, creating a congestion in and near the terminals—these ocean terminals, as they are termed. We have to control it from the depots right on through.

Now, if we set up in a place like this, and operate, for example, through Newport News, we maintain our controls from here, 45 and we necessarily have to have part of the team over there.

Actually all we have here is just an enlarged team, which controls the cargo moving through. The physical handling of it is accomplished by these contractors. They unload the cars, the stevedores load it in the ships, we just take care of the documentation, and protect the general government interest under the contractual relations with these contractors.

Exam. DIAMONDSON: You make more than a documentation, don't you, Colonel, you actually control the movement to the ship?

The WITNESS: We have to, yes. We take care of the preplanning of the ships, to tell where it goes. We tell the stevedores what to put in the ships. That is necessary. It is a management problem largely.

By Mr. COUSINS:

Q. What kind of ships are these that transport your cargo?

A. Commercial vessels. They are the Liberty and Victory ships, the regular run of the mine commercial vessels.

Q. Operated commercially?

A. Yes, they are operated commercially.

Q. Do you have special arrangements with them for handling your cargo?

A. There are probably a very small number for military crews on, such as special type vessels, LTS—some of the LST's are operated by Navy crews, the Navy furnishes us the ships. And the great bulk of our cargo is handled in regular commercial 46 vessels, operated by commercial companies.

Q. Why could it not have been handled under the commercial operation of the base as it existed prior to last May?

A. Because it is a government facility, and we needed the management of it, as I explained it before. It is management, which

really differentiates between some facilities via which we are handling an operation and just simply arranged on a tariff basis to let it ride through there. That is when you handle the small movements.

Q. What do you do to the freight itself which could not have been done by the commercial operator?

A. Which part of the freight are you referring to?

Q. Any part of the freight you are handling.

A. Well, highly secret items, we put special guards over, keeping them in restrained places or restricted places.

Q. Yes.

A. The other cargo, there isn't anything that I know of that we do to it that the conventional commercial shipping operation wouldn't perform just about the same handling operation in.

Exam. DIAMONDSON: How about crating or boxing?

The WITNESS: We don't do any crating or boxing, as a regular operation at the port of embarkation. We only prepare bulk packages. There was a separate operation, and some of it is still going on, but that is operated by a firm of contractors under the engineer corps. They did some preparation on some of their cargo
47 for the onward ocean movement. They operate in an area that is set aside for that purpose. That is a different operation.

Exam. DIAMONDSON: At the present time?

The WITNESS: They still have a small operation going on in Warehouse 2. They take in some paneling there, and crate those, for the on-ward movement. Then they turn it back to us.

Exam. DIAMONDSON: Doesn't any army traffic come in at the present time that is unloaded and boxed and crated before it is loaded on board the boat?

The WITNESS: Practically not. We might find one or two items that might require additional crating to prevent damage in the ocean carriage of it, that is all. It comes from the depots prepared for the Army movement. We check it.

By Mr. COUSINS:

Q. How about assembly of the items of freight? Do you do any of that on the Base?


A. You will have to break that down and tell me what you mean by "assembly." What do you mean by "assembly"?

Q. Do you get shipments of parts?

A. Parts of what?

Q. Well, parts of anything, into the base, that you assemble into a finished article or machine or automobile or anything like that?

A. No, that is not an assigned responsibility of a transshipping facility of this kind.



48 Q. Do you do any processing?

A. We, on some motor vehicles, check the processing that has been accomplished back at the depots, and then where we find it defective we finish it out, damaged by sea water, or some other reason. And some that come into the base from areas where they don't accomplish their own processing of that kind, then we accomplish the processing of it, but that is the mere applying of preventatives. They are special liquids that prevent damage to the vehicles from sea water—in-transit damage, we term it. It is not a disassembling of the unit, and packing of parts, or preparing it in that fashion, but simply painting all that stuff on the underneath side of the vehicle, and parts of the vehicle, to prevent corrosion and damage in the on-ward movement by sea, which is the usual way of doing it.

Q. Well now, Colonel, can you tell me what is the difference in the material shipped through Norfolk, from the material shipped by the Army over public piers at other ports like Baltimore and Philadelphia? What is the difference that requires you to have the operation of this; whereas you use public terminals at these other ports?

A. Well, there are different commodities that require different treatments, if you are talking about the bulk shipments that move from some of these places, like grain, it moves out of the elevators into the ship, they don't require a terminal there. If it is coal, they move it in bulk into the ship. So you will have to tell me
49 what commodities move from Baltimore and Philadelphia, I am not familiar with them. That which moves through Albany, that I have some knowledge of, is grain. Then there is some coal that moves through here. It moves through a special type facility, and is simply dumped into the ship.

All we have to do is send a team to those places, and they supervise the stevedores and documentation, and that is all that is needed. It may be an intermittent movement; for example, I believe I explained a while ago we were handling a brief shipment, one that would start on Monday and be finished up by Friday, at Newport News, and we wouldn't have another movement through there perhaps for a month. We would simply send a team over there. We take care of all the central documentation, accounting, making of the agreements with the stevedoring contractors and terminal operators. We make that in that way: They have responsibility for that particular operation as an out-port operation. It is called an out-port operation. But at some place you have to have one of these plants, where it can be sent out to take care of the business pertaining to that particular movement at that particular place.

Q. That is just what I have difficulty in understanding. Let me ask it in this way: What is there in the nature of freight handled

through this Army Base that prevents it from being exported through Philadelphia or Baltimore, over the railroad piers that are there in operation?

50 A. Oh, we determine the varied nature of it, and the continuity of it. The items themselves, might be shipping a few vehicles through Philadelphia, or movements of some other type through some other place. As I explained, we send a team over there, and send it through. You wouldn't have the variety moving through there, in order to be in a continuous flow, since you have a big terminal like this.

Q. When you get a shipment of freight in the Army Base for export, when do you find out where and when it is to be exported?

A. We have information at this port from an element that is known as the Overseas Supply Division, that operates under the G-4 Section of the Department of the Army, and they have elements of those in the New York Port, and so on. There are certain control points in that set-up. They handle the receipt of requisitions from the overseas bases. This is in the case of export cargo. Those are transmitted back to the depots, and then we receive copies or information from those. When that is called forward we know where it is going.

Q. When it is what?

A. When it is called forward. That means when it is called up from the depots to points of origin. This is not a depot. This is strictly a transshipping operation. So we call the cargo forward.

It moves from the depots, and we know exactly where it is bound.

51 It is marked. It is what we call forced marked, or it has a code on it, and we know it is coming. We know it is bound to some particular place. Under the markings, and under the shipping documents—in other words, under the shipping information which we receive and compile, we know where it is bound.

52 Q. Well now you've got a good bit of freight I suppose stored in your warehouse right now?

A. Yes.

Exam. DIAMONDSON: On the grounds?

The WITNESS: Yes, in the open storage, and in these transshipping sheds.

By Mr. COUSINS:

Q. All right. Now, do you know right now where that is going—all of it?

A. Yes.

Q. And do you know when it is going?

A. Yes.

Q. Why is it stored, then? Why is it held here?

A. It is only detained, it isn't stored. It is detained in an in-transit status.

Exam. DIAMONDSON: Until the bottoms are available?

The WITNESS: We have to order ships, and see that they are loaded out properly. They are in a detention status, not warehouses like they do in a depot. We don't break open packages, and fill requisitions.

Exam. DIAMONDSON: Do you know when that traffic is in transit whether you are going to ground store it, warehouse it, or leave it on the car?

The WITNESS: From the descriptions we know generally, and from the arrangements we have made for the ship to be on berth, we know whether we are going to have to load it to release the cars, or
53 whether it will be switched right on to the piers for immediate stevedoring, in other words, transferring to the ship, or whether it is a type of cargo that can be stored in the open and safeguarded. So we put it into the transshipping sheds adjacent, and then it is hauled onto the piers as required in the stevedoring operation. We make a pre-storage plan for the vessel, and then it is hauled up, hauled to the ship side, based on that particular type of plan.

By Mr. COUSINS:

Q. Why is it that you move some of this freight around on the base, from one warehouse to another, or from the warehouse to the pier, or from the pier back to the warehouse? Is that just a mistake?

A. Frankly I don't know what your question means. You will have to break it down. We don't move cargo back and forth if it is in transit. We move it with a view to its going towards the ship, the shipside.

Q. Isn't it a fact you sometimes move cargo from one warehouse to another?

A. You mean these buildings—they are not depot warehouses—we use them as transshipping sheds. We might move an item from one place to another, depending upon its type, but that would be a rare operation—very rare—because it is so arranged in a line, in these buildings, that it is hauled forward to the piers for loading out. Our management, our plan, is to reduce the man hours expended in the handling of our trans-shipping operations, so the number of re-handlings we accomplish in the base, are at least
54 to the absolute minimum.

Exam. DIAMONDSON: Do you ground store some traffic in order to be relieved of demurrage?

The WITNESS: We are obliged in some cases to unload the cars to be within the free time. Of course our purpose is to release these

cars just as rapidly as possible to aid the economy of the country so it will not be using the railway cars for warehouses. Our detention time on railway cars has been rather good.

Exam. DIAMONDSON: That is because you have unloaded them onto the ground or into the warehouses?

The WITNESS: Or on the piers. Those big pier sheds accommodate a lot of cargo.

By Mr. COUSINS:

Q. Now, Colonel, you said to a large extent commercial vessels are used.

A. I will say that is 98%.

Q. All right. Take that large movement last fall that you mentioned. Was that commercial vessels?

A. Which movement last fall? I haven't mentioned any movement last fall.

Q. Let's talk about Blue Jay.

A. That was last spring.

Q. All right, last spring. Is that what you testified about?

A. Well, I mentioned Blue Jay. I haven't testified to any extent about it. I said Blue Jay was a highly classified project, and that a great deal of detail with reference to it we would have to withhold, unless some other arrangement could be made about it. I can give you generally the make-up of those ships, if that is what you want. We required about 70 ships to handle that particular movement out of this port.

Q. All right, that is what I want to talk about. That was Blue Jay, was it?

A. Yes, that was Blue Jay.

Q. Those weren't commercial ships operating in regular routes, were they? That went to Greenland, didn't it?

A. When you say "those", are you speaking of the entire 70?

Q. Whatever you were talking about, Colonel, that is what I am talking about. I think you described it as a large special movement taking 70 ships, or something like that.

A. I will say about 40 of those ships were commercial vessels—40 to 45 of them.

Q. It must have been under special arrangement, wasn't it?

A. Well, all these ships are under special arrangements. They are chartered—regular commercial charter rate.

Q. They are not operating a common carrier service?

A. That is what they are, they are common carriers. They have a charter arrangement with the Military Sea Transport Service, and they put them on berth here for out-loading our cargo, and

56 when they discharge the cargo at destination, they go on their way to another operation that could be a commercial operation, strictly.

Q. All right. You had a tremendous amount of material for Greenland, didn't you?

A. Yes.

Q. You are not suggesting in your testimony that there is anything secret about that, are you?

A. There are still many parts of it that are secret. You will have to tell me which part you refer to.

Q. The newspapers have been full of a great deal of it, haven't they?

A. Well, you have read them.

Q. I don't want to bring out any secrets, but I have no information that came to me in any secret way. I get my information from the newspapers.

A. We have our instructions with reference to which part of the Blue Jay Project is still top secret, and which to release. If you speak of just Blue Jay-Greenland, there isn't any secret about using those terms.

Q. All right, this big special movement that you spoke of last spring, was the movement to Greenland for the construction of the airfield, wasn't it?

A. It was for movement to Greenland.

Q. You are not telling me that that went in regular common carrier service, are you?

57 A. I can tell you that about 45 of those 70 ships that were utilized, perhaps more of the entire movement, were regular commercial ships manned by civilian crews, and furnished for the operation by commercial lines.

Exam. DIAMONDSON: Under charter to the Army?

The WITNESS: Not to the Army. They were chartered to the Military Sea Transport Service, which is part of the Navy. We tell them to put a ship on berth. They have ten from the United States lines, or any other shipping operation, or company, and they put it on berth, it is loaded out, and that is the last we see of it. It goes to destination, discharges, and then goes on its way. It might go from Greenland to Africa, or some other place, in the commercial operation.

By Mr. COUSINS:

Q. Well, that ship is operating quite a different way from the type of ship that handles the commercial shipments that go over Stevenson & Young's portion of the pier?

A. Not much differently than most of the tramp service in the

world. That is what most of the shipping lines engage in is tramp service, that is known as a tramp service—out of line operations.

Exam. DIAMONDSON: Colonel, are any of these commercial shipments handled by Stevenson & Young ground stored in this area or warehoused?

The WITNESS: Oh, yes.

Exam. DIAMONDSON: They are. They don't necessarily
58 move down to the pier to be handled by Stevenson & Young to a commercial vessel, do they?

The WITNESS: Your question was, these commercial shipments?

Exam. DIAMONDSON: Just the commercial now, I am not talking about military supplies at all.

The WITNESS: Well, Stevenson & Young receive cargo on the piers for commercial account. It comes in by truck, it comes in by railway car.

Exam. DIAMONDSON: We're talking about rail movement now.

The WITNESS: Rail, too.

Exam. DIAMONDSON: All right. Now is any of that traffic that you just described actually ground stored on Army property before it is loaded into the ship, or warehoused?

The WITNESS: It is stored in these sections marked in pink, here.

Exam. DIAMONDSON: It is stored in warehouses that are being operated by Stevenson & Young, is that it?

The WITNESS: Yes.

Exam. DIAMONDSON: Well, is any of it ground stored on Army property?

The WITNESS: Oh, some of it may be held for a brief period, outside of those sections. Across from them is some open storage. That is north of those sections, that is towards us, where we are sitting
now. If you look due south you will see those.

Exam. DIAMONDSON: Does Stevenson & Young have any
59 leased grounds in this area, here, for ground storage purposes?

The WITNESS: They don't lease any of the ground. The method is that we permit it back to the Maritime Administration, and they operate over it under their contract with the Maritime Administration, in handling commercial operations. They formerly leased the property.

By Mr. COUSINS:

Q. Who directs the railroads where to place the cars that are consigned to the Army?

A. My Port Transportation Division of my administrative set-up in cooperation with the port.

Q. Where does he tell them to put them?—

A. Wherever they require.

Q. Is that to a large extent back here in this yard—what did you call the place where the 19 tracks are?

A. Oh, that is sometimes referred to as the marshalling yards.

Q. Yes, marshalling yards—holding yards.

A. Holding yards. They are called various terms.

Q. We will call it the holding yards. Is that where you direct the railroads to deliver your cars?

A. Well, that is something that I would like for you to get from someone more familiar with the details of the exact contacts made with the railroads than I am. I am the Port Commander, and they carry out the program. The whole thing varies. The contacts are made by the yardmasters and by various people, and sometimes the railways will switch it in, and sometimes we will pick it up at a given point, but just where in each case, from day to day, there are experts or people who serve under me, who have that detail at their fingertips.

Mr. KREBILL: I might say at this time we will have the Port Transportation officer as a witness, and also the Yardmaster, who can testify as to the details concerning those movements.

Exam. DIAMONDSON: I notice scale houses on exhibit 3. Are any cars actually track-scaled, that you know of, Colonel?

The WITNESS: That is a truck scale, I think that you see here.

Exam. DIAMONDSON: Do you have a track scale in the area?

The WITNESS: I haven't made use of one, if there is one. I think there was one over on that property that is across East Hampton Boulevard at one time. How often it is used I am not sure about that. I believe there is a track-scale over there.

By Mr. COUSINS:

Q. I understood you—

A. Excuse me. You were looking at the one north of Hampton Boulevard.

Exam. DIAMONDSON: Yes,

The WITNESS: That is a track scale. There is another scale that is just out here, used for other types of traffic. That is not a track scale.

By Mr. COUSINS:

Q. I understood you to testify that Stevenson & Young perform a number of services for the Army with respect to Army freight, is that correct?

A. Yes, that is correct.

Q. Can you list the various services that they perform?

A. I can tell you about the two contracts, generally what they perform in each, if that is what you want.

Q. Well, supposing you limit your answer to the present contract.

A. Well, they have two contracts with us. They have one under which they perform a checking service, down at the piers. There they check aboard the vessels the freight that is loaded into the vessels, by the stevedors who contract with us. That is what we term on the water front a checking service contract—they are freight checkers.

Separately from that—that is largely a clerical operation—separately from that, they have a terminal service contract with us under which they perform numerous duties—numerous functions. Generally those are the unloading of railway cars, placing of the freight either in these sections of these different buildings, transshipping sheds, or on the piers, or in the open storage. They check it out of the cars, place it, and then they transfer it when we require it, to the piers, or shipside, if the ship is on an open berth, such as a bulkhead, or along side of one of our regular piers, they will move the freight to a point of what we call “rest” on the pier. And there it is picked up by the stevedors and placed on the ship. That is the function generally of Stevenson & Young.

62 Q. What else do they do?

A. Oh, they furnish labor for policing around in areas where they perform.

Q. What does that mean “policing”?

A. Cleaning up.

Q. Cleaning up?

A. Yes.

Q. Have you, in your exhibit, included the compensation that you pay them for those services?

A. We have included a copy of the contract we have with them, and in that is the schedule. Isn't there a copy of it?

MR. KREBILL: In connection with that, I might say the excerpts from the contract do not include the rates for the various services. However, I do have copies of those contracts here in full, which counsel may examine if he wishes.

MR. COUSINS: I should think, Mr. Examiner, we should have the full contract, if we are going to have portions of it.

EXAM. DIAMONDSON: What are you after, the rate of pay?

MR. COUSINS: That is one thing that occurs to me. I can ask the Colonel something more about that.

By MR. COUSINS:

Q. Do you pay them a compensation measured in some way that covers all of these services, or do you pay them specifically for each separate service?

A. They operate with us on the contract that provides for a com-

63 commodity rate for unloading railway cars, the same as any commercial operator, and then for furnishing what we call extra labor for anything; they are paid a different compensation for that.

Q. You mean that you pay them so much a ton?

A. Yes. So much a ton. And that is monitored also by the Port Transportation Division of my headquarters.

Q. When you pay them so much a ton for handling a certain type of freight, I suppose the rate varies as to the nature of the article?

A. Yes.

Q. All right. When you fix the rate of payment, so much per ton, does that cover the unloading of cars, the checking of the goods, the shifting, as you say, from one place to another, and the policing services?

A. No, no. Commodity rate is for unloading the cars, the placing of the freight—if it is stored along side the car—the placing of it at the first point of rest, that is what it is commonly known as.

Q. Does that include the checking, too?

A. Yes, checking of all the cars.

Q. But nothing else?

A. Well, I wouldn't say nothing else. There may be some peculiar situation. You will have to get the contract and look at all the schedules. There are different compensations.

Q. I agree with you.

64 A. They are numerous and complicated, so I can't outline them here. That is the same as in any commercial operation.

Mr. COUSINS: I think Mr. Examiner, we ought to have the whole contract and not just a part of it.

Exam. DIAMONDSON: How about that?

Mr. KREBILL: In connection with that, I would like to say I don't believe the actual rate of pay for the various services is in issue in this case at all. The contract is a long, involved document, and I think that we have placed into the record the portions of the contract which are pertinent to this case, and I do have copies here which can be examined, of the entire document. I would prefer not to put in the whole contract. However, if it is your wish that it be introduced, if you will give us time to reproduce it, we will attempt to do that, although I see no reason for it.

Mr. COUSINS: I would be willing to agree with counsel on certain other excerpts of the contract being placed in evidence, and probably we won't have to have the whole thing if we are able to go over it and agree on certain of the parts.

Exam. DIAMONDSON: Suppose counsel get together on that during the noon recess. Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: You used a term a while ago and I didn't answer.

65 If you want me to answer: You said, "The rates we fix should be . . ." It should be borne in mind by counsel we didn't fix the rates, they were bids by the contractors. Then there were certain negotiations that adjusted some of the prices, but we didn't fix the prices. They fixed the prices. They are the people who are doing the work, and they asked for certain prices, based on their operations as commercial operators.

By Mr. COUSINS:

Q. All right.

Exam. DIAMONDSON: I'm curious to know one thing, Colonel. Are all these charges paid on the basis of weight, or isn't there actually some charges based on the size?

The WITNESS: Measurement or weight.

Exam. DIAMONDSON: Whichever is greater?

The WITNESS: Well, the contract calls for some clauses that has weight or measurement, then others, it is weight or measurement, whichever is greater; so it doesn't always work out that way.

By Mr. COUSINS:

Q. Colonel, what is it you want the railroads to do?

A. In what respect?

Q. In respect to this complaint?

A. I am not familiar with all the bases of the complaint. All I want the railways to do is to perform a good service at the same rates that they would perform for any commercial operator through one of these terminals.

Exam. DIAMONDSON: You want the railroads to come in—

66 The WITNESS: That is my own opinion.

Exam. DIAMONDSON: Colonel, do you want the railroads to come in here and do the switching that you are now performing?

The WITNESS: They do switching here frequently.

Exam. DIAMONDSON: Do you want them to take over all the switching that is now performed by the Army power?

The WITNESS: If they can do it at no greater cost than we would do it, I would be glad for them to come in here and do it.

Exam. DIAMONDSON: Proceed.

By Mr. COUSINS:

Q. You say you would be glad to have them do it?

A. Yes. As a matter of fact, they did it before we got these diesels going, that we have now.

Q. Did that cost you anything?

A. I am not familiar with just what the compensation was for that.

Q. Supposing the railroads would do the switching at no extra cost, would you want them to do it?

A. All of it?

Q. Yes.

A. I surely would.

Mr. KREBILL: I think that is going a little beyond—

By Mr. COUSINS:

Q. At their convenience?

A. You can't do anything at your own convenience, if you are doing it for someone else. You have to do it where and when
67 they want you to.

Exam. DIAMONDSON: You would have them do it under your control and direction?

The WITNESS: If you would let them switch themselves, they have to know what they are doing, we have to give them the switch list and know what to do with it.

Mr. KREBILL: Any terminal operator would have to do that, wouldn't he?

The WITNESS: Oh, yes, that is just the common practice.

By Mr. COUSINS:

Q. How about the unloading of cars?

A. What do you mean by that?

Q. Do you want the railroads to unload them?

A. They certainly can. I would be glad for them to unload them.

Q. Do you want them to do it?

A. Well, I think when I said I would be glad for them to do it, I think that answers it.

Q. Will you permit them to do it at their own convenience, in an orderly manner?

A. I don't know how any business can be run, if you run it at the convenience of someone else. They couldn't possibly do it at their own convenience, unless their convenience coincided with our requirement.

Q. You don't expect the railroads to unload these cars back to ground storage, do you?

A. What do you mean by back to ground storage?

68 Q. What do you think I mean?

A. I have a hard time trying to determine.

Q. What have I said that you don't understand?

A. I have a difficult time in determining and reconciling your questions with our practice, that is what I am trying to indicate.

Q. All right, you tell me the practice.

A. When you say back to ground storage, we only provide ground storage when it is adjacent to railway tracks and accessible, generally.

Q. All right. Then we will leave the work back out. Do you expect the railroads to unload cars at ground storage?

A. If they are doing the unloading, they would have to unload them where we want the cargo, that is only natural.

Q. Which would include ground storage?

A. It would include any kind of storage.

Exam. DIAMONDSON: Would you expect them to reload the car and take it down to the piers, at the time you wanted it done?

The WITNESS: We wouldn't, unless they were compensated for it. We don't expect our terminal operator to do it without paying him for it. For any handling there has to be compensation, of course.

Mr. KREBILL: I think I can shorten this by just asking one question: Are you expecting the railroads to perform any service in connection with the military traffic that they are not performing on commercial traffic here at the base?

The WITNESS: No. No, just the ordinary conventional handling in terminals, that is all.

By Mr. COUSINS:

Q. Would you permit the railroads to do the unloading themselves—not Stevenson & Young now, but the railroads?

A. Sure. It wouldn't make any difference to me whether they used Stevenson & Young's personnel, as long as they used people to do it. It wouldn't make any difference to me if they were on the direct payroll of the railroad company, or whether they employed them by contract, or how they got them, it would make no particular difference to us.

Q. Would it make any difference to you as to the time when they did it?

A. Not necessarily. They could do it at night, or daytime.

Exam. DIAMONDSON: Why don't they do it now, Colonel?

The WITNESS: You mean the railroads?

Exam. DIAMONDSON: Yes. Why don't they bring a car in and set it at the point where you want it unloaded at ground storage, for example? Why do you go out and get it?

The WITNESS: Well, because the railways so far have not performed that type of service on our call.

Mr. KREBILL: I think we will have a witness that can explain that quite fully.

Exam. DIAMONDSON: All right.

70 By Mr. COUSINS:

Q. Why do you think the railroad should pay the Army a wharfage allowance?

A. I am not too familiar with the break-down of these different allowances, and what you mean by wharfage allowance. All I understand about this whole affair is that the government has felt that it is necessary to try to get an unloading allowance for railway cars, of the box car type coming into this terminal, which contain freight, for export. That is all I know about them. When you start talking about wharfage cargoes and things of that sort, I don't know how they enter into the case.

Mr. KREBILL: I think I will have to object to this line of questioning, because it is beyond the scope of this witness' testimony. We will have another witness who will testify concerning the tariffs and the holding out of the railroads, and all that, in connection with that—

Exam. DIAMONDSON: And the actual operations.

Mr. KREBILL: And the actual operations.

Exam. DIAMONDSON: All right, Mr. Cousins, reserve those questions for that witness.

Mr. COUSINS: I thought this was actually the man who brought the complaint.

The WITNESS: I don't complain very much.

By Mr. COUSINS:

71 Q. Now Colonel, let's be frank about it. You said that as far as you are concerned you would like to have the railroads come in and do all the switching in here?

A. I said I would be glad to have them come in and do it.

Q. And you said you would like to have them do all the unloading, no matter where these cars were unloaded?

A. I said I would be glad to have them do it.

Mr. KREBILL: I object to that line of questioning. Of course anybody would like to have them do everything they will do, but what they would like to have them do and what they expect them to do, are two entirely different things.

Exam. DIAMONDSON: I think the Colonel has expressed himself clearly on the record on that point.

By Mr. COUSINS:

Q. What I want to know, Colonel is this: If in your opinion, the railroads can operate in that manner, and you said at their convenience, why is it that you could not permit the public terminal operator to continue handling this base in the way that he did before, and ship your traffic through here?

A. You're asking too much question there for me.

Exam. DIAMONDSON: Just a minute.

Mr. KREBILL: That has been fully covered in the direct testimony as to why they took the piers over. The witness has explained that it is by reason of maintenance of the property, and management of the property, and all of those things. I think those are very fully covered by his testimony. I don't know what counsel is driving at.

72 Exam. DIAMONDSON: The reasons were given by this witness in his direct testimony as to why they took over the pier. Now the question is, as I understand it, why couldn't it have been done in the way of a public operation.

Mr. COUSINS: That is right.

Mr. KREBILL: That is exactly the question I asked him on direct examination, why it couldn't have been continued as it was by the public operators, and he answered the question.

Mr. COUSINS: That is right. I have heard his answer, and I still do not understand why it was necessary for the Army to take over when the Colonel now says that he could permit the railroads to operate under practically normal conditions.

By Mr. COUSINS:

Q. And yet you couldn't permit the terminal operator to operate in a normal way.

A. No, because that involves a management problem. You would have to have a management team in here to settle the accounts of the terminal operator. They don't work for nothing, as you quite well know. Somebody has to monitor all that, manage the whole thing, and direct the bringing in of the cargo. That is all in over-lay staff of ours, which is large enough.

Q. You expect to direct the railroads in the same way, don't you?

A. I would expect to give them a switching instruction, and so forth, where the stuff is to go. I couldn't expect it to be unloaded by anybody any place. They couldn't make up their own minds.

73 They would expect that, I am quite sure.

Q. Where and when?

A. Naturally. Any commercial operator has to do that.

Q. Yes, but we are not talking about commercial operators. We are talking about the Army.

A. We have a commercial operator in here as our terminal operator. He is the regular recognized operator in the tariffs, and is a regular terminal operator set up to operate for us.

Q. Yes, but you didn't let him operate as a terminal operator, you stopped that.

A. I don't know, he does a pretty wide operation. We just tell him what to do. He furnishes all the labor and handles all of that job of unloading the cars, alining the cars, he does the whole thing.

Mr. COUSINS: I will stop there, Mr. Examiner, until I have a chance to look at the exhibit.

Exam. DIAMONDSON: All right. We will recess at this time until 1:30.

(Whereupon, at 12:05 o'clock p.m., a recess was taken until 1:30 p.m. the same day.)

74 Afternoon Session

Exam. DIAMONDSON: The hearing will be resumed.

Mr. KREBILL: Mr. Examiner, pursuant to our discussion before the recess, concerning the contracts, counsel for the carriers and I have agreed to put into evidence the two current contracts which are in effect between the Army and Stevenson & Young.

I ask that the contract for Stevedore checking and clerking service, number DA-44-046 TC-41, be marked for identification.

Exam. DIAMONDSON: It will be marked exhibit No. 4.

(Complainant's Exhibit No. 4, Witness Weed, was marked for identification.)

Mr. KREBILL: Now, I ask that the contract for car, truck, and barge loading and unloading, and terminal operation services number DA-44-046 TC-42, be marked for identification.

Exam. DIAMONDSON: That will be number 5?

(Complainant's Exhibit No. 5, Witness Weed, was marked for identification.)

Mr. KREBILL: The information concerning the track mileages is not yet available, but we hope to have it in a few minutes.

Exam. DIAMONDSON: You may proceed with the cross examination.

THOMAS J. WEED resumed the stand, testifying further as follows:

CROSS EXAMINATION.

75 By Mr. MEYER:

Q. Colonel Weed, will you turn to exhibit 3, the map which I introduced? On the lefthand side of that map, you have designated

in red certain areas in warehouse No. 3, and on Pier 1, which the legend describes as Stevenson & Young. Am I correct in understanding that that is intended to indicate that those particular areas are occupied by Stevenson & Young in connection with the commercial shipments moving over the piers?

A. Most of them.

Q. How were those particular areas selected?

Are those the particular areas that the Army sub-permitted back to the Maritime Commission, and the Maritime Commission in turn by contract assigned to Stevenson & Young?

A. It doesn't work exactly that way. Generally, that is probably true. By examination of the sub-permit, you will see the language indicates when we don't have immediate need of any part of this property, then we indicate it back to the Maritime Administration. It is done either by a letter, or done just orally. We set up the conditions. We hand it back to the Maritime Administration, and they have a standing contract with Stevenson and Young who are their agents for the operation of any of those properties that are turned back to the Maritime Administration, and they operate them either for their own convenience, which in the case of one of those sections they use it as a kind of a shop, or they can rent it out to some commercial tenant for brief periods, supposed to be used for transshipping. Or they use it as strictly a transshipping temporary storage of cargo that is moving through commercially.

Q. In other words, these areas marked in red are the ones which you have in some fashion or other currently indicated are available for the Maritime Commission?

A. Yes.

Q. The Maritime, pursuant to that indication, they are now used by Stevenson and Young for their commercial shipments?

A. Well, they have commercial cargo in most of those. One or two of them they have temporarily some of this Bluejay Cargo. When it moves out, then they will use that same space for some commercial cargo. They make up their own minds about that.

Q. What I am driving at is this red area is extremely flexible, it could change tomorrow?

A. That is right. It is flexible, the same as this section right here. (pointing) I might hand it over to Stevenson and Young as agents for the Maritime Administration, I might give it to them tomorrow, if they show a real genuine need of it—I might hand it over to them. That is the way the permit with the Maritime Administration reads, our agreement with them.

Q. Yes.

A. If we don't have immediate need of either berthing space, or any of this other space, open storage area, or closed storage, is what we call these warehouses—why we, either by

letter or orally, because it is done from day to day, as a matter of fact.

Q. Yes.

A. We might tell them, "Well, here is a space for you, go ahead and use it."

Exam. DIAMONDSON: Do you charge for it?

The WITNESS: Under their contract with the Maritime Administration, they make a charge for the commercial operation of it, and they account for those funds to the Maritime Administration. They don't account to us for the part of the property they utilize for those purposes. We permit it to the Maritime Administration. It is their property, and we permit it simply back to them, and tell them we are not using that area, "You go ahead and use it."

By Mr. MEYER:

Q. Supposing you needed it all, is there anything that would require you to permit the Maritime Commission to use any of it, or permit Stevenson and Young to use any of it in commercial operations?

A. Well, that would be incidentally done by contingencies, which I have no way of foreseeing that arise. I don't know whether I would have need of it or not.

Q. You do have day to day control over what areas would be used for those commercial purposes?

78 A. I have control that is permitted to the Army by the Maritime Administration, under the terms of the permit.

Q. Well now, when ships come in, to receive commercial cargo here, do they necessarily stop on the north side of pier 1 in that area marked in red?

A. Not necessarily.

Q. They will dock wherever you want them to?

A. There is one down there now standing on the outside. They have commercial cargo on just the opposite side of that pier, on the outside, the same general location, but on the outside. And we have some cargo in on that north side, simply by arrangement with them.

Q. Yes.

A. It is the type of cargo that they can conveniently handle on the outside, so they handle it there.

Q. Yes.

A. And they may not have cargo inside of the pier shed at all, they may operate over the Apron, such as they do with their paper that comes in. They just take that off the ships and run it into sections of warehouses they use for that purpose, and hogsheads of

tobacco, they run it out of the warehouse section right to shipside. They wouldn't bother stowing it on the pier.

Q. Except in the most temporary sense of the word, the marking of the certain areas in red doesn't mean anything at all, does it?

79 A. Oh, yes, it means they can rely on those sections, and if they have real need of them, we would get out of them, because we are committed to let them operate through all those, but if they don't have a tenant, we don't want them to stand there vacant.

Mr. MEYER: I believe that is all I have.

Exam. DIAMONDSON: This exhibit No. 3 doesn't indicate specifically where the ground storage space is. Would you describe that for us, please?

The WITNESS: The ground storage space of the base, or that is used by Stevenson and Young for commercial purposes, or which part?

Exam. DIAMONDSON: Well, both.

The WITNESS: The ground storage space is adjacent to the railway tracks, and it is both on the north and south side of the double track that leads in crossing Hampton Boulevard at what we call the main entrance, leading west along that track. That is all what we call open storage.

Exam. DIAMONDSON: What about south of warehouse 1?

The WITNESS: That is open storage also.

Exam. DIAMONDSON: How far down, to the limits of the area?

The WITNESS: Well, it runs off to a section of filled ground, considerably south of that warehouse, and that filled ground is not available for the storage of anything.

Exam. DIAMONDSON: Well, south of warehouse 1, then, and south of the tracks that serve warehouse 1 on the south—

80 The WITNESS: Is open storage area?

Exam. DIAMONDSON: That is not reached by rail?

The WITNESS: Not reached directly by rail, no. The method there is to unload on to some type of vehicle and shift it over into that area and store it.

Exam. DIAMONDSON: How about south of South Street, there? Underneath the section marked "Naval Supply Depot Annex."

The WITNESS: Yes.

Exam. DIAMONDSON: That triangular section in there, is that ground storage space?

The WITNESS: Yes, that is open storage. Some of it is rather low, the water gets up there.

Exam. DIAMONDSON: So that south of South Street is open storage space?

The WITNESS: That is right. And north of South Street also, this strip by the tracks.

Mr. COUSINS: I can't quite hear you, Colonel.

The WITNESS: Then there is another strip north of the track leading through there. All of that is open storage. Just north of the track leading from Hampton Boulevard into the warehouse area. There is a strip of ground in there that is used for open storage. In one small area, there that is shown in green, the Maritime Administration have some stuff stowed in there.

Exam. DIAMONDSON: How do you get the material over to this open ground storage space that is not served by rail?

81 The WITNESS: It is transferred from the railway cars to what we call "lowboys". Those are these low-slung open trailers. It is placed aboard those, and towed over to an area away from the track, too far away to be reached by a crane, shifting the cargo from the car to the ground. It is put aboard those, taken over to the area, then with a crane set off on the ground.

Exam. DIAMONDSON: And to get it down from the pier to that ground storage, do you reload it on a car?

The WITNESS: Not in all cases. It is put on board the lowboys, and shipped from there. Sometimes we put it on cars, depending on where it is. If it is in the area east of Hampton Boulevard, we might take it back to the railroad track, put it back on the railroad cars, and ship it down to the shipside.

Exam. DIAMONDSON: Traffic that is unloaded alongside the rails, would be reloaded on cars to move it down to shipside?

The WITNESS: It is done both ways. It is done by reloading it back aboard the railway cars, switched down to shipside, or it may be placed on those low-slung trailers.

Exam. DIAMONDSON: In reloading it on a car, do you use Army equipment? Do you use Army flat cars, or do you use railroad cars?

The WITNESS: We use Army, Navy, and railway company cars. We use all three.

82 Exam. DIAMONDSON: You mean you appropriate a railroad car to reload it to get it down to shipside?

The WITNESS: We get it from them by rental arrangement, if we need them.

Exam. DIAMONDSON: Do you pay for the use of those cars, do you, the railroad cars, under those circumstances?

The WITNESS: I think our port transportation officer can give you the details on that when he comes on the stand.

Exam. DIAMONDSON: All right.

The WITNESS: I think the number of railway cars we have now, and the number of flats we get from the Navy, are just about enough to accommodate that particular transfer of cargo. If we

needed any railway cars, we would arrange with the railway line to get them.

Exam. DIAMONDSON: Are there any further questions?

Mr. REYNOLDS: I have one or two.

CROSS EXAMINATION.

By Mr. REYNOLDS:

Q. Colonel Weed, can you tell us the average amount of Army and commercial freight handled over the Army base during a month?

A. I can give you the Army.

Q. All right, let's have that.

A. Stevenson and Young will have to testify on the commercial, I don't know. They are handling it all the time.

Q. I beg your pardon?

83 A. They are handling their commercial operation every day. I don't have any figures on that.

Q. Give us the amount of Army freight, the average that is handled over the base during a month?

A. It averages about sixty or seventy thousand measurement tons. We are supposed to handle about 75,000, but I haven't had many months when we have had just that much as the average. It sometimes drops below, but our allocation is 75,000 measurement tons a month. That is our allocation.

The actual handling, might be slightly below that, it might be slightly above it, depending on availability of ships.

Q. The average, then, is between 60,000 and 70,000 tons a month, is that right?

A. Well, if you go back to May first and come down to date, we have handled about 900,000 tons through here of government cargo. So you can work it out.

Q. Well now, what proportion of that was export freight, and what proportion was import freight, if you know?

A. Oh, the import is so small that it wouldn't be one tenth, of one per cent, I don't believe, right through this property.

Q. I suppose the freight that you handled during the time Bluejay was active, was far above the average, is that right?

A. That shipping season is rather brief. The amount of tonnage was rather large, so I would say it is above the average. The volume is greater in that outloading period. If you took it
84 on the year, then of course, it would average so much per month.

Q. Do you screen the employees of Stevenson & Young who work on the base here?

A. Oh, there is a type of waterfront screening that is supplied to

all people who work on the water front. They have these—I think it is Coast Guard pass.

Q. I didn't hear you.

A. I think it is Coast Guard pass that all of them have to enter the waterfront areas and be employed by anybody on the waterfront. There isn't any screening beyond that that I know of. There may be some other, but I don't know about it.

Q. You don't know whether or not you screen them for loyalty for example?

A. They are employees of contractors, they are not my current employees.

Q. Yes; but the work is paid for by you?

A. Yes.

Q. Are they screened for cleanliness, and things of that sort?

A. They don't have any employees working in any restaurants around here.

Q. I suppose by that that no is the answer?

A. What?

Q. I assume from that that the answer is no?

A. We are not required to screen Stevedores for cleanliness, 85 that I know of, or longshore men, which are the ones that work for Stevenson and Young.

Q. How many hours during a day does Stevenson and Young maintain crews on the Army Base?

A. The normal working day, and then they work shifts if the volume of cargo requires it, so they may have some continuously. Others, they will just probably knock off at midnight. But if the volume requires it, then they will work around the clock.

Q. Am I correct in understanding then as a general rule they work until midnight?

A. No, the evening shift, you might say that is, oh, fairly exceptional, but they work in the evening from time to time—that is that swingshift, that is the evening shift.

Q. How often do you have evening shifts?

A. My port transportation officer is directly charged with the supervision of their work in the unloading of the cars, who can testify to that.

Q. Is some employee of Stevenson and Young always on the base?

A. Did you say some employee of Stevenson and Young?

Q. Some one or more employee- of Stevenson and Young, are they always there?

A. Either Stevenson himself is always here, or some of his employees, yes. He lives here.

Q. 24 hours a day?

A. Yes.

- 86 Mr. REYNOLDS: I believe that is all I have.
Mr. FISHWICK: I have one or two.

CROSS EXAMINATION.

By Mr. FISHWICK:

Q. Colonel, what responsibilities do you have for the proper loading of vessels with cargo moving over the piers?

A. Military cargo?

Q. Yes.

A. My responsibility is to see that it is loaded in accordance with our prestowage planning. Of course, that is done through assistants, organized into elements that supervise all of that work.

Q. Yes.

A. We prestore on paper the vessels which are necessary, which is common practice. And the stevedores work in accordance with that pre-stowage planning.

Q. Is it a responsibility of yours to see that military cargo that is loaded in vessels is properly packaged before it is stowed in vessels?

A. Well, we wouldn't load it, of course, unless it were suitably packaged for ocean movement.

Q. Yes, properly packaged?

A. It is either term.

Q. In other words, if military cargo, moving over these piers, arrived at destination in a damaged condition, as a result
87 either of unsuitable packaging, or improper stowage, that would be or might be a responsibility of your command, is that right?

A. Well, you are getting into a form of commercial operation there. These ships are all commercially operated, and consequently they are under the underwriters.

Q. Yes, I assume—

A. They have an underwriters' examiner who examines this cargo regularly. The shipping line, if any of that cargo is damaged, they are required to account for that, the same as a railway carrier has to account for damaged cargo. If they accept it in a damaged state or a state that is not suitable for ocean carriage, then they are liable.

Q. Yes, now I am not talking about legal ability, I am talking about Army responsibility.

A. I am responsible for the quantities, and that it is stowed in accordance with the regulations, but how it arrives at the other end, I am not responsible for that.

Q. In other words, if there were a key operation, military operation, and a vessel loaded with military cargo arrived in a seriously

damaged condition, so that the military operation were in some way hindered, and it were determined that the cause of the damage was unsuitable packaging, or improper stowage in the vessel, you would not be responsible for that, is that correct?

88 A. You made up quite a story. That is too much of a question for me to answer that way. You said if the vessel arrived in a damaged state. I am not responsible for the vessel.

Q. If the cargo, I beg your pardon.

If the cargo arrived—

A. I am responsible only that it is loaded in quantity in accordance with the pre-stowage planning, that when it was loaded it was in reasonably suitable condition, packaged for out-loading by an ocean carrier.

How it gets to the other end is the responsibility of the carrier.

Q. Suppose it were determined that when it was loaded it was not in reasonably suitable condition, would you be responsible?

A. That had better not be determined around here. (Laughter.)

Q. I take it that would be your responsibility?

A. It would be somebody's responsibility.

Exam. DIAMONDSON: Does the Stevenson and Young company have the responsibility?

The WITNESS: The stevedoring company has a contract with me, and they are responsible under the contracts that they will stow the shipments properly. They examine the cargo also, and they are insured.

By Mr. FISHWICK:

Q. Aren't you responsible for the cargo?

A. I am responsible for the quantity and kinds, and naturally as the Government representative here, I am required to see that
89 the people doing the job are performing. A stevedore contractor is under contract with me to properly stow a ship, and he stows it in accordance with the responsibility in that particular profession or trade, and his work is examined into by the insurance representatives of the carriers, the underwriters.

Q. But if your—

A. That is the way the responsibility is carried.

Q. Yes, but insofar as the Army is concerned.

A. Well, the Army—I am talking about the concern of the Army.

Q. Let me finish my question, please. So far as the Army is concerned, if the contractor doesn't do his job properly, that is your responsibility, is it not?

A. Oh, yes, he is under a contract with me.

Q. That is why you are here, is it not, to see that the contractor—

A. I am here as the top manager of the whole plan.

Q. Yes. Now, who is responsible for preparing these stowage plans that you referred to?

A. That is the responsibility of my force.

Q. Your force?

A. Yes.

Q. Now, if there is anything wrong, basically wrong, with the stowage plan, that is your responsibility, is it not?

A. Well, that responsibility is divided with the military Sea
90 Transport Service, the ships' officers, and all. They all check those stowage plans, and the responsibility is arrived at in a group fashion.

Q. That is the responsibility of your command, is it not, sir?

A. To develop the stowage plan, yes.

Q. And to see that they follow it?

A. But that plan, of course, since it involves a ship which the Master is responsible for from the stability standpoint—

Q. Yes.

A. —safety at sea, he is responsible that that stowage plan meets with his stability condition of the vessel. And if it does not meet with it then he asks us to change it, and we change it.

Q. Now, in some instances, do you not load vessels so that cargo that is required first comes out of the vessel first, is unloaded first?

A. Everybody does that.

Q. And if, when a particular cargo arrived at destination, it wasn't so loaded, that would be your responsibility, would it not?

A. Oh, yes.

Q. That is another reason why the Army put you here?

A. Yes. The management of the property and the plant, that is what we are here for.

Q. Now, sir, are there some instances in which military
91 shipments which I believe you referred to as secret shipments, move through this port of embarkation? There are such instances, are there not?

A. Secret items.

Q. Secret items?

A. Yes.

Q. Are those items generally shipped through ports of embarkation such as this, rather than over commercial piers, such as New York, Philadelphia, and other ports?

A. Oh, they can be shipped either way. They are usually boxed. All we do is see they go through.

Q. What special handling is given to Secret items at the other ports where there is no Army installation?

A. Just to see that they are checked in, that they are delivered to whoever is responsible for loading them on the ship.

Exam. DIAMONDSON: Do you actually ship Secret items in that manner, or do you ship it always through the military port?

The WITNESS: They move either way. Because if they come in by a common carrier, they are in the hands of a commercial carrier there, so they are simply transferred to a ship. It doesn't necessarily have to be through a port of embarkation, that is, one of these type facilities operated as a port of embarkation.

By Mr. FISHWICK:

Q. It is true, is it not, that if you wanted to ship a Secret cargo via a common carrier, you can put it in a car and seal the car, and it would not be opened under normal circumstances until it again arrived at where it could be taken possession of by the Government, whereas, that would not be true at a commercial pier?

A. I think all shipments are handled by a sealed car. The seal is broken by the consignee.

Q. That is true though, is it not, what I said?

A. The last of what I said is true.

93 Q. Can you tell me at what percentage of capacity you presently handling cargo—military cargo over your pier?

A. I don't understand your question.

Q. Well, you testified that you were on the average handling 60 thousand to 70 thousand tons of cargo per month.

A. Yes.

Q. What is the maximum amount that you could handle in any one month? If you know.

A. We haven't testified the maximum capability of this port yet. I don't know.

Q. As a man with considerable experience—

A. Do you want me to estimate it?

Q. I would like to have you estimate it.

A. Through this entire property, or just this part operated by the Army.

Q. Through the part that is now being operated by the Army.

A. Per month?

Q. Per month.

A. Oh, we could probably run 250 thousand tons through here, if we had the ships to take it.

Q. 250 thousand tons per month?

A. Yes.

Q. Suppose you took the entire property?

A. Excluded all other shipments?

94 Q. Yes, sir.

A. All other types, both the Navy and the commercial?

Q. Yes, sir.

A. And we had the bottoms to receive it, and the railway companies perform to get it in here.

Q. Yes, sir, I think you can count on the railway companies, I don't know about the bottoms.

A. We would probably run that up to 350 thousand.

Q. 350 thousand?

A. Or 375, right in that range.

Q. That is the kind of cargo you are now handling?

A. Generally.

Q. How does the tonnage that you are moving over the piers now compare with the maximum tonnage that moved over these piers during World War II, if you know?

A. I wasn't here in World War II.

Q. I assume the answer is you do not know?

A. I wasn't here, and I'm not going to guess.

Q. Of the 60 thousand to 70 thousand tons of cargo per month moving into the port here, how much of that goes to ground storage?

A. What do you mean by "ground storage?" All these warehouses are on the ground.

Q. I ask you what is called open storage, if that is what you are talking about.

95 Q. Open storage, is that the word you use—

A. Well, it is on the ground, if you are talking about open storage, those are the areas out here that are not covered, don't have any buildings on them. That is open storage.

Q. What percentage of your inbound tonnage moves first to open storage?

A. I haven't really figured it out, I don't know.

Exam. DIAMONDSON: Are we going to get the answer to that question later?

The WITNESS: It is obtainable, I think, on an average.

Mr. KREBILL: Yes, we will have it, at least an approximation.

By Mr. FISHWICK:

Q. I assume that—do you know what percentage of your inbound tonnage moves first to closed storage, as opposed to the piers?

A. No, I haven't figured that. I don't know. I would not like to say off-hand, because it is a moving operation all the time. The type of cargo that we place in what we call covered storage—that is the kind that might be damaged if it is placed in the open for any length of time—the cars are either switched right on the piers, and discharged there, and it is aligned there, in those transshipment sheds or some small percentage is held back in the warehouse sec-

tions, and moved up to the piers, as the operation proceeds in the loading of the ship.

Q. Yes.

A. So percentage-wise, if you want that, we would have to
96 get into that and figure it out.

Q. Will someone be available who can give an estimate of that?

Mr. KREBILL: Yes, I think we can give you an estimate on that.

Mr. FISHWICK: The same thing as to the tonnage moving directly to the piers.

Mr. KREBILL: Yes.

Mr. FISHWICK: As I understand it, the Colonel doesn't have that figure off-hand.

The WITNESS: No.

By Mr. FISHWICK:

Q. As to the traffic which moves directly to open storage, what do you expect the railroads to do there? Do you expect the railroads to load it directly onto the ground adjacent to the railroad cars?

A. What do you mean by "expecting the railroad to do it?"

Q. Well, there is a complaint here asking us to perform.

A. I didn't make the complaint, it was made by the Government.

Mr. KREBILL: Mr. Examiner, I think this is going into detail that this witness is not familiar with. He is the executive officer here, and responsible for the administration, and things like that.

Exam. DIAMONDSON: We can't ask the yardmaster that, Mr. Krebill. We've got to ask the man in charge.

Mr. KREBILL: I think the transportation officer can give you some idea on these details of the operation.

97 Mr. FISHWICK: I think I am entitled to ask the Colonel that. If he doesn't know, I think he can say so. I think I am entitled to ask the man in charge what he wants us to do. He is the man who is responsible, as I understand it, for the whole operation, and laying out what is to be open storage, and everything, and it seems to me I should be permitted to ask him that type of question.

Exam. DIAMONDSON: He is the man that gives the orders. Can you answer the question, Colonel?

The WITNESS: If you repeat it, I will do the best I can.

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

Mr. FISHWICK: As I understand it, Counsel for the Complainant.

would like us to ask all questions relating to what the Army expects to do with respect to unloading, providing wharfage, for shipments of Colonel——

Exam. DIAMONDSON: And switching.

Mr. FISHWICK: —and switching, of Colonel Gray.

Mr. KREBILL: With respect to that, this witness was asked that question, and he said he didn't expect the service from the railroads other than what they were performing on commercial freight.

Mr. FISHWICK: All right. Then I would like to ask another question.

98

By Mr. FISHWICK:

Q. Are the railroads now performing any unloading service to open storage on commercial shipments handled by Stevenson and Young?

A. I don't run Stevenson and Young's business on commercial shipments, therefore, I don't know.

Q. You don't know?

A. No.

Q. Is Stevenson and Young, or any commercial shipment, loaded or now unloaded, and lying on the ground, or any part of the Army base, that is licensed to the Army under the permit from the Maritime Administration, and not sub-licensed back to the Maritime Administration and operated by Stevenson and Young?

A. You started that question by saying "Is there any cargo that is lying in any open storage area."

Q. Yes, sir.

A. That Stevenson and Young handled as a commercial operation?

Q. That is right.

A. I am not aware of any. There may be some around here, I don't know.

Q. To your knowledge has there ever been any?

A. Oh, since we took over the property?

Q. Yes.

A. I think there has been some, yes. I'm not sure.

Q. Do you know whether the railroads unloaded any of that freight — commercial freight — from railroad cars to open storage?

99

A. I haven't been able to distinguish between a railroad employee and an employee of Stevenson and Young, in handling a commercial shipment on this property. I don't know whether they are working for the railroad, or whether they are working for Stevenson and Young, if they are handling commercial cargo.

Mr. KREBILL: Mr. Examiner, I think I can perhaps shorten this a little bit by saying that unless our tariff witness brings in some information, of which I am not aware at this time, it is my understanding that we are not seeking any storage or handling or wharfage service at any point other than on the piers?

Mr. FISHWICK: Am I to understand that on all cargo moving in—military cargo moving into this base—that it is first unloaded to open storage or to closed storage behind the piers, the Army or the complainant in this case are not asking for any—not asking the railroads either to unload and provide wharfage or to make any allowance for unloading and providing of wharfage?

Mr. KREBILL: I feel that our traffic witness will cover that to some extent. I don't want to answer the details of that but I think I can say definitely that no claim is being made as to any handling which is performed other than on the piers. Now whether that is traffic which has been stored in storage or warehouses prior to the movement on the piers or not, I am not in position to say.

100 Exam. DIAMONDSON: Is there going to be a witness who will definitely take a position on that?

Mr. KREBILL: Yes, sir.

Mr. FISHWICK: I want to point out, Mr. Examiner, that I feel somewhat handicapped in cross examining the Colonel because we have been provided with no one so far who could tell us what the Army or the complainant in this case wants us to do.

Exam. DIAMONDSON: I understand that another witness will answer that.

Mr. FISHWICK: Yes. Perhaps my cross examination of the Colonel would have been shortened if we had had the other witness first.

Mr. KREBILL: Mr. Examiner, I know the railroads know very well what service it is they perform on commercial traffic, and we are not asking for anything except what they are performing on commercial traffic. So they know perfectly well what it is we are asking for.

Mr. FISHWICK: The Colonel said, as I understand it, "We are not performing any such service on traffic moving to ground storage on commercial shipments."

By Mr. FISHWICK:

Q. Is that correct?

Exam. DIAMONDSON: I understood the witness to say he didn't know what that service was that was being performed in
101 ground storage for Stevenson and Young, is that correct, Mr. Witness?

The WITNESS: Well, yes. For commercial shipments?

Exam. DIAMONDSON: For commercial shipments.

The WITNESS: Yes, I don't know what arrangements they have with the railways.

Mr. KREBILL: There will be a witness here from Stevenson and Young who I think can answer those questions.

Exam. DIAMONDSON: I was just going to ask you that question, Mr. Krebill?

Mr. FISHWICK: All right, sir.

By Mr. FISHWICK:

Q. Colonel, you testified that the basic purpose of the reactivation of this port of embarkation is to assist in furnishing logistical support to all U. S. Military forces and other types of military assistance commitments overseas. Does the logistical support which you referred to there include anything more than a trans-shipping service?

A. Of this terminal?

Q. Yes.

A. Well, that is about all. We are tramp shipping facility, and our mission is to see to it that the cargo is not delayed enroute from point of origin moving through this port, that it moves through here with celerity.

Q. Do you undertake to maintain any sort of reserve supply, or accumulation of cargo, so that there will not be a delay in the 102 ship movement?

A. That is a depot function, we don't perform that function here.

Q. What is the average tonnage of cargo which you have stored either on the ground or under closed storage?

A. Well, we are accumulating some Blue Jay cargo here. If you separate that from the normal in-transit cargo that moves through here, regardless of the season, if you refer to the cumulation of a cargo for a seasonal operation, we engage in that, which is a normal function of a facility of this sort that has sufficient area to accommodate the accumulation of that cargo. That is being done now, in the case of the Blue Jay cargo. It is simply coming in, and it continues in its in-transit status. It is not diverted to other projects. It is held until the loading-out season begins with that, and then it is all loaded out.

Exam. DIAMONDSON: You don't mean all the traffic you now have in open storage, or in closed storage, is destined for the Blue Jay Project?

The WITNESS: Oh, no; not at all.

By Mr. FISHWICK:

Q. What is your average accumulation?

A. The other day we had about 100 thousand tons of cargo here, and about 20 thousand of it—this is measurement tons—about 20 thousand of it at that time pertained to Blue Jay.

Q. That is about a month and a half's supply of cargo to move over the pier?

103 A. Well, that would be on our allocation of tonnage to move through the port.

Q. Yes.

A. That would be about a month and a half, yes—a little less.

Exam. DIAMONDSON: Isn't it a fair question, it comes in faster than it can go out?

The WITNESS: No, we can move it out if we had the ship bottoms.

Exam. DIAMONDSON: That is what I meant exactly.

The WITNESS: If we didn't have the seasonal condition—we are bound to have some backup of cargo, that is a normal port operation.

By Mr. FISHWICK:

Q. Colonel, the rehabilitation program to which you referred, is estimated to cost about 3 million dollars. As I understand it, your point there was that it was necessary for somebody to repair the piers and put them in shape to handle volume tonnage, and the operator couldn't do it, and the Maritime Administration couldn't do it, and the Army had to do it. Is that about correct?

A. Well, anybody could have done it, if they had had the money. It is just a little matter of money. The contractors did it, we didn't do it personally.

Q. In your direct testimony you stated that it was not apparent that either the Maritime Administration or the terminal operators were able to assume the cost of this rehabilitation program.

104 A. That is right.

Q. They get their money from the same source the Army does, don't they?

A. I don't provide them with their money, so you will have to ask somebody else where they get it from. I don't know whether their receipts are revolving or not.

Q. The complainant in this case is the United States, and I suppose the United States could have gotten that money over from the Army to the Maritime Administration, couldn't they?

A. It would not have been under my jurisdiction. It would have been done by transfer of funds I wouldn't have supervision over. The Maritime Administration of course receives some receipts from these Maritime operations. If they are able without the utilization

of those, to utilize them in the maintenance of the property, is something I am not thoroughly familiar with.

Q. Colonel, when military cargo is unloaded, for instance into open storage, what do you require Stevenson and Young to do in the way of submitting reports to you of the unloading operation?

A. They make an out-turn check.

Q. Of what does that consist—how many copies?

A. That is a detail my port transportation officer—I don't handle all these details myself—he will have to answer that.

105 Q. Colonel, in your direct examination you referred to the main entrance as being the east gate, I believe—the main entrance through which—

A. Well, there is a opening out there, you can call it a gate, if you wish to.

Q. Isn't it a fact most of the rail traffic comes into the port of embarkation via the north gate, and is delivered by the Belt Line?

A. I don't know through which entrance the greater volume enters the port. I see it being switched in via both routes.

Q. You didn't mean to testify most of it came in via the Virginian, and the east gate?

A. I haven't so far stated that.

Q. Colonel, are there ever occasions when changing military—a changing military situation requires you to change your handling of traffic which has been already accumulated for trans-shipment?

A. It hasn't so far; except in some minor instances, we might divert a piece of cargo to some other place, or hold up a piece of cargo. But it hasn't amounted to much since we were reactivated here.

Q. There are instances, are there not, in conducting the ports of embarkation, where it is necessary to shift the plans, and rehandle cargo?

A. I testified to that in the direct testimony, that the diversion of cargo, that is where the management applies. You
106 have to have control over it so you can divert it if necessary.

Q. You have control over it now?

A. We have to have.

Mr. FISHWICK: That is all I have.

Exam. DIAMONDSON: Are there any further questions? Do you have any further questions, Mr. Krebill?

Mr. KREBILL: No, sir.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.
Call your next witness.

LT. COLONEL DAN L. SMITH was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. KREBILL:

Q. Please state your name and address.

A. I am Lieutenant Colonel Dan L. Smith, Transportation Corps, U. S. Army, Hampton Roads Port of Embarkation, Norfolk, Virginia.

Q. What is your assignment?

A. I am the Port Transportation Officer at Hampton Roads Port of Embarkation, Norfolk, Virginia. My responsibilities include controlling the movement of freight scheduled for overseas ship-
107 ment into and through the port. Also, we accomplish and supervise storage operations incident to the movement of cargo through the facility, whether inside to warehouses, or outside to open ground storage. Additionally, the port transportation officer furnishes local transportation for personnel and freight, operating administrative vehicles and material handling equipment motor pools. He also operates and maintains railroad equipment assigned to the port.

Q. Will you state your education and experience in the transportation field?

A. I am a graduate of the American University of Washington, D. C. Bachelor of Arts Degree, 1933. Seven and one-half years' railroad experience in the traffic department of the Pennsylvania Railroad. Various assignments since May, 1941, in the Army. First in the Transportation Division of the Quartermaster General's Office in Washington, D. C., then in the Traffic Control Division in the Office of the Chief of Transportation, also in Washington. Later, Headquarters, Third Military Railroad Service in the Philippines, and in Japan. Transportation Section Headquarters, United States Army, Alaska. More recently, deputy port transportation officer at New York Port of Embarkation, Brooklyn, New York. And then, movements control officer down here, and presently port transportation officer.

Q. Are you familiar with the so-called project "Blue Jay?"

108 A. I am.

Q. Will you state briefly what it is?

A. Project "Blue Jay" is the code name given by the Chief of Engineers, I presume, having to do with certain military construction overseas.

Q. How is it being carried out?

A. It is being carried out at this facility by a representative of the Chief of Engineers, a local area engineer, who has on this base civilian contractors working for him on the project here.

Q. Is there an entity known as North Atlantic Constructors connected with that?

A. There is.

Q. Will you explain what the functions of the North Atlantic Constructors are?

A. To the best of my knowledge, North Atlantic Constructors are several private firms engaged in a joint venture under contract with the Army Engineers to perform certain work in connection with the so-called project "Blue Jay." With respect to the movement of export and import shipments of materials for the North Atlantic Constructors, there are no important distinguishing factors from the usual Army shipments. In other words, these shipments are made on Government bills of lading, and/or commercial bills of lading, on which the Government pays the freight charges for the most part. During the shipping season in 1951 this traffic was unloaded by the

North Atlantic Constructors with its own employees until approximately the first of November, after which time it was unloaded by Stevenson and Young, Incorporated. Since the realignment of the port and area Engineer functions I alluded to, all of this loading and unloading has been performed by Stevenson and Young personnel.

Q. Is any of this material that comes through for North Atlantic Constructors, or project "Blue Jay", stored on the Army base?

A. Yes, a considerable quantity is stored on the Army base.

Q. How does that storage compare with the normal military movements through the base?

A. Insofar as the storage operations are concerned, they are quite similar. There are certain special features of this project which require the out-loading to be performed during a limited shipping period at a certain time of the year, and therefore cargo is received in this facility for them and must of course be put to the ground awaiting that transshipping period. As far as the storage operation is concerned, it is quite similar to the Army freight—regular Army cargo.

Q. Do I understand you to say then during the certain seasons the storage is for a longer period, the material remains in storage for longer periods?

A. That is right.

Q. What is the normal length of time for holding Army materials at the port?

A. We are required to the best of our ability to receive cargo in this port and trans-ship it within a normal two-week period, or 15-day period.

Q. What kind of military traffic is moving through the port?

A. Well, traffic moving through the port consists generally of what is known as "Troop support cargo", which is for support of our overseas forces everywhere. Also that cargo which is moving under the various military defense assistance programs, and certain special projects which we may have committed through this installation by higher authority.

Q. Are you familiar with commercial traffic moving through the port?

A. Only generally. I have knowledge that it moves through the port.

Q. In connection with military traffic, will you describe in detail the manner in which the cars are handled, by whom, and under whose instructions, on the Army base, both export and import from the time that the cars arrive at the base, until they leave the base?

A. Cars containing military freight, upon arrival at the base, are under the control of the port transportation division from the time of receipt from the carriers until they are received on the piers preparatory to loading to vessel, at which time the responsibility for the unloading is transferred to another division of the port called the terminal operations division. So that there will be no misunderstanding, should cars require unloading either in a warehouse such as we are in, or in outside areas, we would give Stevenson and Young instructions to unload those cars, and if they are able to go directly to the piers to be assembled, awaiting ship, and unloaded into the piers, the terminal operations division would give Stevenson and Young the orders to unload those cars down there. The same contractor, except two different operating divisions of the port giving unloading directions.

The cars arriving at the base are of two general types, namely, domestic freight, which contains items for the port stock, and which items are directly consumed in the operation of the facility, and those containing strictly export freight intended for furtherance via water overseas.

On the domestic cars, instructions are given by the chief of my traffic branch to the yardmaster, Mr. Frank Jones, to arrange for the spotting of these cars at appropriate warehouse, and/or ground storage for unloading. The yard master gives such written instructions to the carriers. Empties are collected and made available for return to the carriers. On export cars, export traffic, considerable pre-planning has already been accomplished by the terminal operations division in connection with the schedules of shipping;
112 and these cars are in all possible cases delivered to the piers to meet specific vessels. In such cases where the piers can accommodate no additional freight, or should the shipping situation become altered, it is necessary to arrange the unloading and storage

of the cargo back of the piers in either warehouse section or open ground storage, depending somewhat on the commodity and the degree of protection from the weather necessary.

Instructions for these unloadings are transmitted in the same manner.

Empties are assembled for the convenience of the carriers and made available to their crews when leaving the base. On import freight, empties are ordered from the carriers by the traffic branch and the yardmaster notified. Spotting instructions are given the carriers by him, and when loading has been completed cars are pulled from the piers and/or open ground storage area, and billed out to destinations.

Q. You mentioned loading and unloading services performed on the piers. Did you state by whom those services were performed?

A. I did—by Stevenson and Young.

Q. And how about "other loading and unloading services," performed on the base, other than on the piers?

A. All loading and unloading services to and from railroad equipment is performed by the contractor presently being Stevenson and Young.

Exam. DIAMONDSON: When you say "railroad equipment," do you also include the Army equipment—Army flat cars?

The Witness: Yes, sir, that is correct.

By Mr. KREBILL:

Q. Did you explain the use of the Army equipment, the cars, and the switching locomotives?

A. No.

Q. Would you do so, please?

A. Yes. We have three small diesels in this base which come under my supervision.

Exam. DIAMONDSON: What are those, electric-diesels?

The Witness: That is correct, sir, electric diesels. The reason we have these engines, I think principally, is the fact that we are on two railroads. We're on both the Virginian, and the Belt. And we don't have enough traffic to warrant a stand-by engine all day long for both carriers. Also, there is a good deal of you might say intra-plant switching which we must do which would be more economical to have handled, presumably, the way we are doing it.

We have certain movements of pipe, and piling, which come in, and must be unloaded awaiting enough quantity to go on a vessel. When these commodities are about to be trans-shipped we have to get several days' lead time in loading up Army flats to keep the

vessel working once it gets started. For that reason, also, we need this auxiliary power.

114. In all practical cases, either the Belt Line crew on the Virginian crew is called to perform the initial placement to which we are entitled when the cars are run.

Q. Who places the cars on the piers for unloading?

A. Either the Belt crew or the Virginian crew, for the most part.

Exam. DIAMONDSON: You mean cars that haven't been reloaded from ground or closed storage, do you not?

The WITNESS: That is right. That is correct, sir.

By Mr. KREBILL:

Q. Do you have reference also to inbound cars arriving from the downtown yard?

A. Yes. In all cases, when the cars arrive if we are able to give an immediate placement on the piers the Belt or the Virginian crew will receive a written work order, switch order, and take the cars right on in. If it develops we cannot give them an immediate placement, they will return the next time the crew is in with another drag of cars and perform the placement for us then; at either piers, warehouse, or ground storage.

Q. On inbound shipments coming to the port for export, do you know what proportion of those cars move directly to the piers for unloading?

A. I don't know exactly. I perhaps can estimate pretty closely.

Q. Do you feel that you could estimate fairly accurately?

A. Well, we have never compiled any exact statistics. I think I could estimate fairly accurately.

115 Q. In other words, that information is not statistically available, is that what you are saying?

A. That is right.

Q. What would be your estimate?

A. I would estimate that about 50 percent of the carloads that arrive at this base go immediately to the piers.

Exam. DIAMONDSON: When you say "immediately", do you mean without being held in the yard at all? They are directly taken down to the pier, is that correct?

The WITNESS: No. Mr. Examiner. I mean will move directly to the piers without being unloaded.

Exam. DIAMONDSON: They may be held for several days before they actually reach the pier?

The WITNESS: It may be held a day or two, yes, sir.

Exam. DIAMONDSON: As I understood you, Colonel, you estimate about 50 percent of the inbound traffic that is to go out for export

stays in the car in which it came in, and is eventually moved to the piers?

The WITNESS: That is correct.

Exam. DIAMONDSON: And that the other 50 percent is unloaded either in the ground storage or closed storage?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: You haven't told us yet, Colonel, where the Army picks up the cars from the Virginian or the Belt, under the present operation.

116 The WITNESS: We of course have advance information that certain cars are moving for this port, intended for this port, through what is known as the re-port of shipment, which Army depots or vendors are required to transmit when cars are shipped from origin. When cars arrive in the city of Norfolk on the respective terminal lines of the carriers, we normally get a call indicating to my car desk in the traffic department that they have certain cars for us, and they then automatically bring those cars into the base, the Belt Line coming through the northeast gate, on their own trackage—

Exam. DIAMONDSON: Which is the northeast gate?

The WITNESS: That is that one sir.

Exam. DIAMONDSON: This? (Pointing)

The WITNESS: It comes through the northwest, I guess, of the whole property, through the Navy area—you have it correctly there.

Exam. DIAMONDSON: That is describing it, through the Navy Yard.

The WITNESS: And the Virginian bringing their freight directly in from Quartermaster Junction.

Exam. DIAMONDSON: Through the east gate?

The WITNESS: Right. The Virginian leaving their cars in what we call the up-town yard, which is that directly east of the Hampton Boulevard, that yard right there.

Exam. DIAMONDSON: The yard shown underneath "Parking lot and lumber storage."

117 The WITNESS: That is right.

Exam. DIAMONDSON: What do you call that?

The WITNESS: We call that generally the uptown yard.

Exam. DIAMONDSON: The uptown yard.

The WITNESS: And the Belt, leaving their cars in pier No. 1 yard, which is directly south of warehouse 4 that we are now sitting in. Those six tracks—we're in 4-D at the moment—right in there—they bring them in as an automatic procedure, merely notifying us that they are arriving, and they either give us formal notification on an arrival notice which indicates that they have phoned us also, or they may put it on the freight bill, confirming phone conversation.

Exam. DIAMONDSON: They notify you by phone the car number,

initial, and commodity that they have to come in, is that right?

The WITNESS: Yes, sir, that is right.

By Mr. KREBILL:

Q. Colonel Smith, when freight arriving at the base cannot immediately be accommodated on the piers, and it is unloaded either into a warehouse or open ground, is it held for any longer period than necessary—any longer period than until the arrival of a vessel?

A. Your question is a little confusing, Mr. Krebill. Perhaps I can explain it in this way: in all possible instances, to of course
118 save the cost of rehandling, we try to move the cars either immediately upon arrival, or within a day or two, down to the piers, where they can be unloaded either directly to the ship's hook, or in the pier shed, or the berth, supporting the vessel. Where there has been a change in the ship picture, or should the cargo piers be too crowded to accept the freight, then it must be unloaded and it will be unloaded either to inside storage or outside, depending on the nature of the cargo, and will move forward to the piers as soon as it can be accommodated.

Q. In other words, when you are referring to storage, you are not using that term as meaning storage for a prolonged period, you are meaning it as being held until it can be accommodated?

A. Held until it can be accommodated. We are torn between the expense of rehandling the freight, which we try to avoid, and the very earnest desire to relieve carrier's equipment and get it back on the railroad.

Exam. DIAMONDSON: How much free time do you have?

The WITNESS: Seven days, sir.

Mr. KREBILL: Mr. Examiner, I would like to have this document, which is an exhibit of correspondence between the Port transportation officer, Army Base Piers, and certain railroads, identified as an exhibit.

Exam. DIAMONDSON: It may be identified as Exhibit 6.

119 (Complainant's Exhibit No. 6, Witness Smith, marked for identification.)

By Mr. KREBILL:

Q. Colonel Smith, I show you the document which has been identified as Exhibit 6. Will you state what it is?

A. This exhibit comprises a letter which I addressed, under date of 12 October, 1951, to the local lines serving the Hampton Roads Port area, and their individual replies of various dates.

Q. The individual replies will speak for themselves as to the nature in which your request was received?

A. That is right.

Mr. KREBILL: That is all.

May we go off the record just a moment?

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

Mr. KREBILL: That is all I have on direct examination.

Exam. DIAMONDSON: Colonel, will you glance at Exhibit No. 3, and state for the record where the Army rails are? Where do the Army rails begin that serve this port?

The WITNESS: To the best of my knowledge the trackage lying in the part of the facility which has been "permitted" to the Army, commences at this point at Quartermaster Junction, and runs due west, to and including the piers. Now I am not an expert witness on this point because probably the Post Engineer would have
120 access to the original agreements. I know that this of course is the way the Virginian delivers its freight. This may be their own railroad from Quartermaster Junction up to what is commonly known as the "uptown railyards."

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

Mr. COUSINS: The Defendants understand that the United States owns all of the tracks shown on Exhibit 3 within the brown markings. That is to say, everything west of Quartermaster Junction.

Exam. DIAMONDSON: Is that correct, Mr. Krebill?

Mr. KREBILL: I think that is correct.

Exam. DIAMONDSON: Do you have any further questions?

Mr. KREBILL: No, I have no further questions of this witness.

Exam. DIAMONDSON: We will take a short recess.

(Short recess taken.)

Exam. DIAMONDSON: Come to order, gentlemen.

Mr. KREBILL: Mr. Examiner, I would like to withdraw the witness temporarily while we put on a witness who can answer the questions concerning the track mileages which came up before noon today.

(Witness excused.)

LT. COLONEL JOSEPH C. MARPHIS was sworn and testified as follows:

121 DIRECT EXAMINATION.

By Mr. KREBILL:

Q. Colonel Marphis, will you state your name and address, please?

A. Lt. Colonel Joseph C. Marphis, Hampton Roads Port of Embarkation.

Q. What is your position here at the port?

A. Special assistant to the Port Commander.

Q. Do you have information concerning the miles of track of the base?

A. I have some information that I obtained from the Post Engineer regarding this matter.

Q. Would you state for the record what that is?

A. That is the amount of trackage and the number of miles covered by these tracks, both east and west of Hampton Boulevard.

Q. Would you read the figures into the record?

A. East of Hampton Boulevard, which is going toward the Quartermaster Junction, there are two tracks which are main lines from Quartermaster Junction to the marshalling, or holding yards; only one of which is operable the entire distance. There are 17 tracks in the marshalling or holding yards, of which four are in a stand-by, and are not presently being used, making a total of 19 tracks in the marshalling yards, of which four are in stand-by, and are not being used.

There are 4.2 miles of main-line trackage from the Quartermaster Junction to the marshalling yards, of which 2.1 miles is fully
122 operable. That is the one track, the main line of it being used, the other not being fully operable. There are two miles of main line usable trackage in the yards.

Exam. DIAMONDSON: In the so-called up-town yard?

The WITNESS: In the holding yard, or marshaling yards, yes, sir. There are 8.1 miles of additional trackage in the holding yards, of which 2.4 miles are in stand-by status, and are not being used, which are the four tracks.

Exam. DIAMONDSON: You mean they are in a condition that they cannot be used?

The WITNESS: Yes, sir. So from Quartermaster Junction to east of Hampton Boulevard, there are a total of 14.3 miles of trackage, of which 4.5 miles are not presently being used. West of Hampton Boulevard, to include the Army Base.

Ex m. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: There are 17 tracks being used by the Army; and six tracks that are used by the Navy.

Mr. COUSINS: You are now talking about west of Hampton Boulevard?

The WITNESS: Yes, sir, west of Hampton Boulevard.

Now did you want the spurs included in the trackage? There are nine spurs that go in the Naval Supply Center that I don't know whether or not you want them included as trackage.

123 Exam. DIAMONDSON: Include them, and then show what the distance is, what the mileage is.

The WITNESS: All right, sir. Those six tracks that are being used by the Navy, if we include the nine spurs, make a total of 15 tracks. That is six that are actually used by their warehouses, and nine spur tracks going into the Naval supply center.

The mileage of the 17 tracks used by the Army is 7.3 miles. In view of the fact I have included these four additional tracks in my figures previously, which I was comparing, the mileage would be a little bit different than what I have here. How much I can't say at this time. It would amount to less than a mile, I am sure.

Mr. FISHWICK: Mr. Examiner, I cannot hear the witness, I'm sorry.

Exam. DIAMONDSON: Speak up a little louder, will you, Colonel?

The WITNESS: Yes. I said in view of the fact I have included in my figures the ten sets of tracks, I included that also in arriving at the mileage of these ten sets of tracks. Now that we are taking out four of them, my figure which I have here for total mileage, which includes these four tracks, is not accurate.

Mr. COUSINS: What four tracks?

The WITNESS: The four tracks that do not appear on this exhibit, but which are indicated on the exhibit with a note to the effect that these two warehouses are Navy-occupied, although they do not show on the map.

124 Mr. COUSINS: Yes.

The WITNESS: So the total mileage of the Navy, including those four tracks that I have is the figure 3.8 miles, which will be somewhat of a lesser amount, and I would like to give the exact amount later if I may.

Exam. DIAMONDSON: All right.

The WITNESS: The mileage of the nine spurs amounts to five-tenths of a mile for all nine.

Mr. COUSINS: Those are Navy tracks, too, are they?

The WITNESS: Those are the tracks to the Naval Supply Center, yes.

Mr. COUSINS: Yes.

The WITNESS: So if we add those in as part of the Navy, of course we increase the figure from 6 to 15.

Exam. DIAMONDSON: Six to 15 tracks?

The WITNESS: Yes, sir, and the mileage will then be increased by five-tenths of a mile when I get the revision of that figure.

On the piers—that was up to the piers—the trackage on the piers, six depressed tracks, on piers 1 and 2, three, on each, and the mileage, 1.3 miles. There are four tracks on the apron—on each apron—making a total of 8 tracks, which amount to 64 hundredths of a mile.

125 By Mr. KREBILL:

Q. Did you say 64 hundredths of a mile?

A. Six-tenths of a mile.

Q. On each one of the tracks?

A. No, the eight tracks.

Q. The total of the eight tracks?

A. Six-tenths of a mile on the aprons, going alongside the piers.

126 Mr. KREBILL: May we go off the record?

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: I'm sorry, it is 1.6 miles. With your permission I would like to verify that figure also.

Exam. DIAMONDSON: All right.

Q. How far is the north gate? What is the distance from the north gate to Pier 1?

The WITNESS: I haven't made any effort to ascertain that, sir.

Exam. DIAMONDSON: Exhibit 3 indicates 1 inch equals 300 feet.

The WITNESS: Yes, sir.

Exam. DIAMONDSON: And we could ordinarily approximate the distance, but we don't know exactly where the north gate is from this exhibit. Could you tell us approximately how far north gate is from the end of the line shown here as the Norfolk-Portsmouth belt?

The WITNESS: No, sir, I am unable to state where the north gate begins.

Exam. DIAMONDSON: Could you furnish that information later, Mr. Krebill?

Mr. KREBILL: Yes.

Exam. DIAMONDSON: Do you have more?

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The WITNESS: No, sir.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION.

By Mr. COUSINS:

Q. Colonel, let's recapitulate a minute now. What is the total number of tracks west of Hampton Boulevard?

A. Well, do you want to include the spurs?

Q. Yes.

A. It should be 32 tracks.

Q. And of them how many are on the Navy portion?

A. 15, including the spurs.

Q. Which leaves 17 for the Army portion?

A. Yes, sir.

Q. All right. Now, of those 32 tracks, what is your total mileage?

A. Subject to verification, of the 3.8-mile figure, it should be 11.6 miles.

Q. All right, of the 11.6 miles, what portion is on the Navy side?

A. Mileage?

Q. Mileage.

A. Subject to verification, 3.8, plus 5/10 of a mile.

Q. 4.3?

A. That is right, 4.3.

Q. You are going to verify that, and if you find it is any different you are going to come back and tell us?

128

A. That is right. Yes, sir.

Q. Just two other questions. Would you say from the water front to Hampton Boulevard it is about a mile?

A. I wouldn't care to say, because I haven't given any thought to the matter.

Q. Don't you know? I'm speaking approximately now. I gather from the plan it is about a mile. Don't you know from your familiarity that it is about a mile?

A. I wouldn't hazard a guess, because that is what it would be, a guess.

Q. Would you hazard an opinion as to what the mileage is from Hampton Boulevard to QM Junction?

A. It should be about two miles.

Mr. COUSINS: All right.

The WITNESS: Thank you.

Mr. FISHWICK: Mr. Examiner, may I ask the witness if he is familiar with the individual tracks, or did he just make a compilation?

Mr. COUSINS: He just made the compilation.

Exam. DIAMONDSON: Read that for the witness.

(Question read.)

The WITNESS: I mentioned when I took the stand it was based on the information I obtained from the post engineers, and not from my own knowledge.

Mr. FISHWICK: Yes.

129 Exam. DIAMONDSON: Are there any further questions? If not, you are excused. Thank you.

The WITNESS: Thank you.

(Witness excused.)

LIEUTENANT COLONEL DAN L. SMITH resumed the stand, previously sworn, and testified further as follows:

Exam. DIAMONDSON: Did you have any further questions on direct, Mr. Krebill, of this witness?

Mr. KREBILL: No.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION.

By Mr. COUSINS:

Q. Colonel, do you agree it is about two miles from Hampton Boulevard to QM Junction?

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: I have walked it, and I think it is nearly three, but the post engineer should know exactly, if he knows his business.

By Mr. COUSINS:

Q. Well, I didn't gather that he had told us.

A. The figures which the Colonel had were from the engineer, as I understood his testimony.

Q. All right, how far did you say it is from the waterfront to Hampton Boulevard?

130 A. By waterfront, where do you mean?

Q. Take the bulkhead.

A. The bulkhead, slightly over a mile is my best estimate.

Q. Colonel, we see a lot of loaded cars out here on the hold tracks between warehouses 3 and 4. How long have they been there?

A. I can't answer how long they have been there, Mr. Cousins, by virtue of the fact that I have a traffic branch that keeps me informed as to how many are one day old and two days old, and so forth.

Q. Are any of them 1 week old and two weeks old?

A. None of them.

Q. How long are they going to stay there from now on?

A. One of two things will happen to those cars. They will either be moved directly to the piers, upon call, or if the piers indicate they are not in position to take them, as soon as we get that definite information, they will be unloaded.

Q. Where will they be unloaded?

A. They will be unloaded into a covered warehouse, if the commodity is such that it lends itself to such storage; or it will be unloaded to ground storage outside, if it is such commodities that can stand the weather.

Q. In either event, the cars will have to be moved from where they now stand?

A. Correct.

131 Q. Who is going to move them?

A. The carriers will move them, either the Belt, or the Virginian, upon our call.

Q. Upon your call?

A. Yes.

Q. When is that going to happen?

A. The question is simple enough, but the answer is difficult, because you set in motion a chain of circumstances having to do with conditions of the piers, to take cargo, arrival of ships, and so forth. Perhaps I can answer you this way: At the shortest possible moment that we can definitely secure information that they cannot be taken to the piers, they will be ordered unloaded immediately.

Q. Will that be a day or two, or a week or two?

A. It will be formally in one or two days.

Q. How did these cars get where they are now?

A. They were brought in—these particular cars outside this warehouse were brought in by the Belt Railroad, in most cases.

Q. They were brought in through the north gate?

A. Correct.

Q. Where were they first placed?

A. Right there.

Q. The railroad made a direct move in through the north gate to these hold tracks and left them there?

A. That is right.

132 Q. On your instructions?

A. The normal place for the Belt Railroad is to leave

their cars is in this supporting yard for pier 1, which is directly outside this warehouse.

Exam. DIAMONDSON: That is between warehouses 3 and 4?

The WITNESS: 3 and 4.

By Mr. COUSINS:

Q. In your opinion, the cars got where they now are in one move on this property?

A. Yes, originally they did.

Q. What do you mean by "originally"? That is where they are now?

A. There may have been some other movements in the meantime. In shifting trains and in drilling cars out of trains, certain other cars may be on certain other tracks out here than they were originally.

Q. After bringing them in and placing them there, the Belt, under your instruction, may have shifted them around somewhat from one track to another?

A. That is correct.

Q. And now within the next several days you expect to instruct the Belt to move these cars again to one of the three places that you have mentioned?

A. That is right.

Q. And assuming they are moved to ground storage or open storage, what is going to happen to the cars after they get to that unloading point?

133 A. The cars will be unloaded by Stevenson & Young personnel, the empties made available to the carrier, and the cars released.

Q. All right. What will Stevenson & Young do with the freight?

A. Stevenson & Young will unload the freight and put it at the point of rest that we direct.

Q. That you designate?

A. Yes.

Q. Then what will happen to the freight after that?

A. Well, if we are still talking about open storage, the freight will remain where it is stored until it can move to the piers within normally a two-week period, for trans-shipment by vessel.

Q. All right. How will it be moved?

A. It can be moved—it will be moved in one of two ways, normally: Either through the use of Army lowboys, or flatbed trailers which Colonel Weed has described, or through the use of Army flatcars, if that seems to be a more practical solution.

Q. You're sure if it is moved by railroad cars it will be Army cars, and not railroad equipment?

A. Right.

Q. As a matter of fact you do use railroad equipment at times for second moves of freight around the base, do you not?

A. Not that I have ever had any knowledge of.

Q. What power will move the Army flatcars from the storage yard to the pier?

134 A. Our power.

Q. Army power?

A. Yes.

Q. Army power only?

A. Certainly, the railroad has no obligation to switch those cars down. They performed their line-haul service, and they have given us a placement. They have fulfilled their bill of lading contract.

Q. As a matter of fact, under the service you just described, they have already filled it twice, haven't they? They placed it once—maybe more—they placed it once, they shifted it around, and then they moved it again to storage.

A. No, no, I don't think so. They bring the cars into this base as they would in any commercial waterfront terminal. The government is entitled to a placement or spot, such as any industrial traffic concern is entitled to. Upon call to the railroad from my office, they will come in and make that spot. It can be either to the piers, to a warehouse, or it could be to open storage area, and after they have performed that spot they have rendered their complete service for which we pay. Any additional shifting I would be prepared to certify a bill for switching.

Q. Have you ever done that?

A. No, I haven't.

Q. You don't regard the delivery of the cars to the tracks
135 on which they now rest as a placement by the railroads?

A. That is correct.

Q. They are put there on your instructions, aren't they?

A. Not exactly. They are allowed to be dropped here. Obviously you have to drop the cars somewhere. In other words, both the Belt and the Virginian must have general knowledge of where they may leave their cars. We have no interchange track as such in this facility. So through long practice, presumably going back spreading, or embracing two wars, for all I know, the Belt leaves their cars here, and the Virginian uptown. Now if they arrive, at the time they arrive we can give them the placement order, they place them at the proper place. If not, within a day or two it can be developed, when it is developed, we give it to them, and they make the delivery.

Exam. DIAMONDSON: Do you specify the track upon which the cars are to be left by the Norfolk, through the north gate, for example?

The WITNESS: Not generally. Not generally, Mr. Examiner. The carriers may call our yardmaster and ask him if the normal track is blocked, or something like that, but we don't designate a specific track where they may leave their cars.

By Mr. COUSINS:

Q. I know, but you evidently require them to shift them around some, after they left them on these hold tracks?

136 A. Let me explain, perhaps I mislead you. Say there is a train they bring in ten cars, the Belt, and it is out here. We require two cars to go down to Pier 1, north inner berth. The Belt crew may find these two cars buried, in the ten cars, and have to do some switching to get them out, to get them down, and that is what I mean.

Q. Now as I understand you, you may not have told the railroads specifically to place these cars on these hold tracks, and that goes either for the hold tracks that you say the Belt uses, or for the hold tracks in the uptown yard the Virginian uses. Nevertheless, the understanding is unless you have some immediate disposition for those cars that is where they are supposed to put them. If they are not put there under specific instructions, they are certainly put there under a common understanding, aren't they?

A. I think the common understanding the carriers who have been serving this port for many, many years have is, that in such a situation as we have here, all cars can't go immediately to the piers, and therefore they understand completely, whether they are servicing this terminal or some other terminal on their line, that there must be perhaps a short waiting period until positive placement instructions can be given on specific cars.

Q. To some extent, on certain cars, that is?

A. Yes.

137 Q. All right. Now, let's take one of these cars that you instruct the railroad to move from a "hold" yard, to some ground storage point. What do you expect the railroad to do with that car when it gets it to the designated ground storage point?

A. Will you amplify your question a little?

Q. Do you expect the railroad to unload it?

A. No.

Q. Whom do you expect to unload it, Stevenson & Young?

A. Stevenson & Young.

Q. As your agent?

A. That is correct.

Q. Not as a railroad agent?

Exam. DIAMONDSON: That is actually what is being done at the present time, isn't it, Colonel?

The WITNESS: Yes. The only unloading or loading labor force available to the Army in this terminal is Stevenson & Young, a private contractor.

Exam. DIAMONDSON: So far as you know, the railroad doesn't unload any of these cars, does it?

The WITNESS: That is correct.

Exam. DIAMONDSON: At the present time.

The WITNESS: That is correct.

By Mr. COUSINS:

Q. And when you say the railroad doesn't, you mean neither does the railroad's agent, as a railroad agent?

A. Well, to the best of my knowledge, when Stevenson & Young is unloading commercial freight, they are unloading as your agent, when unloading military freight, they are unloading as our agent.

138 Q. All right. As a result of this complaint, you are not asking the railroad to unload cars that are moved from these hold tracks back to a ground storage point. You just look at me now, you tell me what you think.

A. I will look where I please, Mr. Cousins, if you don't mind.

Q. Don't look to somebody else for the answer then.

A. They are not prompting me, I assure you. Will you repeat the question, please?

Exam. DIAMONDSON: The reporter will read the question.

(Question read.)

The WITNESS: No, I don't think we are asking the railroad to unload.

By Mr. COUSINS:

Q. All right.

Now, when this freight is taken from the ground storage point, and moved on Army cars; as you say, to the piers for unloading, you certainly don't expect the railroad to unload that freight then on the piers, do you?

A. No, I don't think so.

Exam. DIAMONDSON: Or to load the flatcars?

The WITNESS: That is right.

By Mr. GOUSINS:

Q. We come to the point then, that with respect to freight that is brought in here for ground storage, under your theory the railroad's obligation is finished when it places the car at the ground storage point?

A. Well, their obligation is finished as to physical handling, 139 perhaps, but I don't feel that it is finished insofar as providing the allowances which we feel the traffic is entitled to.

Q. Do you mean—the answers you have just given me are good as to performing the services physically, but not good as to paying for it?

A. I think that is right.

Q. What service do you think the railroads should pay for on this shipment we have just been talking about?

A. Well, I'm sure you are very well familiar with the position in the case on the part of the complainant. We are asking, insofar as I know, for the same considerations on military freight as obtain on commercial freight moving through this facility. I understand from my limited knowledge that the carriers could either elect to unload their cars or have somebody perform the work for them.

Q. You have just said you don't think we are obliged to unload this car we are talking about, or the freight we are talking about, at any of these points, and now you suggest that we ought to pay the Army for unloading it, isn't that right?

A. No, I merely suggested what I considered the Army is interested in in this case.

Q. It really comes down to the point that you want us to pay the Army for unloading this freight at some point, doesn't it?

A. I think the answer to that probably goes beyond the range of my testimony. We will have a traffic witness fully competent 140 to answer those details that will follow me.

Q. Well, you have had traffic experience.

A. On a very good railroad.

Q. Yes. Which one of those unloadings do you think the railroads ought to pay for, the one back to ground storage, or the one down on the pier?

A. I think that the military freight is entitled to the same considerations that commercial freight is, no matter where it is unloaded.

Exam. DIAMONDSON: Is there any commercial freight unloaded in the ground storage?

The WITNESS: Not that I know of, but it is unloaded at the warehouse.

Exam. DIAMONDSON: In the covered warehouse?

The WITNESS: Yes, sir.

By Mr. COUSINS:

Q. Now, Colonel, haven't I seen here on the base, considerable freight, underground storage, at some distance from any freight line right now?

A. Yes.

Q. How did it get over there, on these lowboys that you mentioned?

A. For the most part.

Q. How far would you say some of that freight is from point of unloading, from cars? Is it 800 or 1000 feet away from the closest point on the railroad?

141 A. Some is immediately adjacent to the trackage, and some is a considerable distance.

Q. Would you say maybe 800 or 1000 feet?

A. That is excessive. Probably not over 150 yards, perhaps 200 yards.

Q. All right, 5 or 6 hundred feet then we'll say.

A. Approximately.

Q. Now if the railroads have the obligation you think they have, and should elect to perform, instead of paying anybody an allowance, you wouldn't expect the railroads to move the freight from the car to that point 500 or 600 feet away, would you?

A. No.

Q. What would you expect them to do? Would you expect them to load it from the car directly into a lowboy, or just drop it on the ground and leave it there?

A. Either.

Q. Which?

A. Well I think either one would suffice.

Q. Would there be room for that sort of operation?

A. I think there is a certain amount of flexibility, yes, because freight keeps coming in and going to the piers all day long.

Exam. DIAMONDSON: Let me ask you, Colonel: Would you expect them to unload it at the point you designate, either along side
142 the track, or at some point away from the track?

The WITNESS: Probably there would have to be some control as to where it should be stored for the maximum utilization of space outside.

By Mr. COUSINS:

Q. Colonel, you wouldn't be unloading freight today 500 or 600 feet from the railroad, if you could unload it right alongside, would you?

A. No, I think not.

Q. What I don't see then is how you can say the railroad could, as a practical matter, unload from cars direct to the ground, because that isn't where your freight is placed today, we can see that.

A. Well, freight is placed adjacent to the tracks insofar as it is possible to do so.

Q. Right.

A. Where conditions exist that we have to move out further, or where for some particular reason certain categories of freight have to be placed elsewhere, they are so directed to be placed.

Q. How long has that freight that is in ground storage been standing there now?

A. Well, the Army troop support cargo has been repeated now several times. It moves generally within a two-week period of the time it arrives, on the ships.

Q. All right. Now, how much longer has some of it been sitting there?

143 A. Are you referring to Blue Jay freight?

Q. You may. I can't see any difference in it when I look at it. It all looks alike to me. Take the Blue Jay, how long have you been accumulating that?

A. Since last fall.

Q. Some of it has been there five or six months then?

A. That is right.

Q. It will be there some time yet?

A. That is right.

Exam. DIAMONDSON: This is open storage you are talking about, Mr. Cousins?

Mr. COUSINS: Still open storage, yes.

By Mr. COUSINS:

Q. Now we'll drop the open storage. If I should ask you the same questions about this freight moving to warehouses, instead of to open storage, would your answers be any different?

A. I don't think so.

Exam. DIAMONDSON: Let's have an explanation of how the traffic would move if it was not unloaded at all from the car.

The WITNESS: If the piers can accept the cargo, of course the ultimate aim of all of this cargo is to get it over the piers and on the vessels to its destination—if the cars can be taken on the piers, they are switched directly down, by either the Belt or Virginian crews, or by our power at odd hours, perhaps, unloaded by Stevenson & Young in the pier sheds, or by the stevedores from

144 the warehouse aprons, or from the pier aprons, and right to the ship.

Exam. DIAMONDSON: That is to say: The loaded car may be held here awaiting space on a ship, for anywhere from 1 to perhaps 7 or 8 days, without being unloaded?

The WITNESS: That is right.

Exam. DIAMONDSON: And then taken down to the pier for unloading?

The WITNESS: That is right. We don't hold them that long normally.

Exam. DIAMONDSON: How long do you ordinarily hold a car that is not unloaded?

The WITNESS: Generally speaking, if we can't get orders on it after the third or fourth day, it is immediately unloaded.

Exam. DIAMONDSON: Go ahead, Mr. Cousins.

By Mr. COUSINS:

Q. Colonel, it seems to us, from such information that we have been able to develop, that there is quite a little shifting of freight from warehouse to warehouse, or from warehouse to pier, and from the pier back to the warehouse, or between different points, that cars of freight come in here and are moved around from one point to another, three, four, five or six times. Can you explain that?

A. There are occasional conditions which make us shift cars from one warehouse to another. From warehouse to pier, of course, is the normal way to get storage freight down to the ships.
145 We do occasionally also have cargo shut out on the piers due to perhaps a miscalculation of space on the vessel, and have to move cars back from the piers back in the yard again.

Exam. DIAMONDSON: Would it be a normal movement from one warehouse to another to use a railroad car at all?

The WITNESS: No. That would be a very rare movement. I can't recall any instances at all of it. But we have made some errors, administrative errors, of one kind or another, in which we might direct a car to warehouse 4-H, and it should have gone over on the other side to 3-E. Those are normal, human mistakes.

Exam. DIAMONDSON: What would you do, move it over by truck under those circumstances?

The WITNESS: I meant the car hadn't been unloaded, Mr. Examiner.

Exam. DIAMONDSON: Oh.

The WITNESS: It had just been given a wrong placement.

Exam. DIAMONDSON: I see.

The WITNESS: We do almost no re-warehousing, once something has been unloaded.

By Mr. COUSINS:

Q. Do you know whether your Army cars comply with the safety requirements?

A. On outbound loads, are you referring to outbound loads?

Q. Your own equipment.

146 A. I can't say that they do definitely. I suspect they do.

Exam. DIAMONDSON: Do they ever go out on the railroad lines?

The WITNESS: Are you referring to Army flatcars?

Exam. DIAMONDSON: Yes.

The WITNESS: No.

Exam. DIAMONDSON: You keep them in this area at all times?

The WITNESS: That is right.

By Mr. COUSINS:

Q. But you are not sure you don't ask the railroad to move them around, are you?

A. We don't ask the carriers to move any Army flats that I know of. They might occasionally be used, be put in for their convenience as idlers, something like that, to get a car all the way in, perhaps, to the end of the berth, or something like that. We normally perform the switching of our Army flats with our own power.

Q. To what extent do you direct the railroads to classify these cars on certain tracks, according to commodities?

A. None, to my knowledge.

Q. How about the cars placed in Pier 1 yard?

A. Mr. Jones, the Yardmaster, could probably testify more specifically on that. But we make no classification by commodities I know of in the yard—any yard. We require the Belt or Virginian crews to classify them.

Q. You give the railroads the instructions for any delivery
147 or any movement of cars that is made on the Army base, do you not?

A. My Yardmaster does.

Q. Yes. And when the railroads have placed a car on certain track, and you want it moved to another, you instruct the railroads to make that movement?

A. No. Would you repeat your question, please.

Exam. DIAMONDSON: Read the question.

(Question read.)

The WITNESS: If the car has been placed by the carriers, and there is a subsequent move after that, we would perform this switch with our own power, instead of asking the railroads.

By Mr. Cousins:

Q. All right. Let's skip the technicality about placement.

When you think a car should be moved the second time by the railroads, you give the instruction to the railroad to move it?

A. What do you mean by "the second time"?

Q. Well, one example you gave is a car that was placed on this hold yard between warehouses 3 and 4. You say that the railroad has an obligation to move that to ground storage or to a warehouse or to a pier. You tell them when and where you want it moved, do you not?

A. That is right. We give them a placement order.

Q. And to the extent that the railroads operate on the pier, they are under your control completely, are they not? They get their instructions from you?

148 A. They get a simple work order, or a switch order from my Yardmaster, a written order, asking them to place a certain car which they have brought in here to the base, place it at a certain designated warehouse or pier location, or other location for outside storage. As far as being under anybody's control while they are here, I don't know that they are under anybody's control.

Q. At least they don't move any cars around without your instructions. They get their orders from you, that is what I am getting at?

A. Yes, they get them from our Yardmaster.

Q. Yes.

And if the railroads were held to have the obligation to unload cars, you would expect to tell them where and when to unload them in the same way, would you not?

A. I suspect that they would want to know generally where the freight should be unloaded, and we would probably tell them.

Q. Wouldn't you go further than that? You would require them to do it, when and where you decide, would you not?

Exam. DIAMONDSON: That is assuming now that the railroad is obligated to do the unloading. You would require them where they would unload, would you not?

The WITNESS: I presume we would indicate that certain cars should be put in certain covered warehouses.

By Mr. Cousins:

Q. Or any place else that you wanted it?

149 A. I suppose so.

Q. And when, also?

A. Generally when; yes.

Q. Yes.

By whom are you employed?

179 A. U. S. Army.

Q. How long have you been on your present job?

A. Since June, 1951.

Q. What were your positions before that

A. Yardmaster on the base for Stevenson & Young, Inc.

Q. During what period?

A. From 1946 until the Army took it over in June, 1951.

Q. Who were you employed by before that time?

A. U. S. Army.

Q. From what period?

A. From 1941 to 1946 as Yardmaster.

Q. What was your position before that?

A. Prior to that I was Yardmaster on the base for Transport Trading. They had the lease for the base.

Q. When did that employment begin?

A. '33.

Q. 1933?

A. Yes, sir.

Q. What are your duties?

A. My duties are supervising the switching, placing of cars in and out of the base. Also keeping proper records as to releases, proper seal records.

Q. What railroads move cars either loaded or empty to or from the Army base?

A. The Virginian Railroad, the Norfolk and Portsmouth Belt Line.

180 Q. Where do the cars enter or leave the Army base?

A. Cars from the Virginian Railroad enter through what is known as Quartermaster Junction. Cars from the Belt Line enter through the North Gate, and at times we do have cars from the Belt Line that enter through the Quartermaster Junction.

Q. Are there any gates at the entrances to the base?

A. Yes, there are.

Q. At which entrance?

A. There are gates at the entrance of North Gate, and there is a gate at the entrance at Hampton Boulevard.

Q. You mean there is a gate at that portion of the Army base at Hampton Boulevard?

A. Yes.

Q. I presume you're referring to a railroad gate?

A. Yes, sir.

Q. Is either gate—either the one at Hampton Boulevard, or the one which you are referring to as the North Gate—ever closed?

A. No, sir.

A. If they were doing the unloading they probably could do it as a matter of routine daily in certain areas.

Q. Has it not been your practice to move certain of your own cars to piers or warehouses—that is, with Army power—which under your theory the railroad has the obligation to move?

A. Yes.

Q. Why do you do that?

A. We do it for the reason that many times there are changes on the piers, late at night, and we have to keep those piers working and supplied with cars, and there isn't either a Belt or a Virginian crew in here to make that placement. Therefore we must do it with our own power, to keep the ship working.

Q. Because you don't want to wait until the next day?

A. That is right, because we can't.

Mr. MEYER: I just have one or two questions.

CROSS EXAMINATION.

By Mr. MEYER:

Q. The instructions issued to the carriers, with respect to placing cars in the uptown yards, bringing them further into the base, spotting them, placing them, and so forth, they are all issued by the Army, by you, or your Yardmaster, are they not?

150 A. Yes, generally speaking.

Q. They are not issued by Stevenson & Young, or even through Stevenson & Young?

A. That is correct. We don't give specific instructions to the carriers on those cars which they daily deliver into this base. The Virginian, for instance, has several deliveries. The Belt has several other deliveries during the day. There are no specific instructions given by any people in the port as to those particular cars until they are brought in and delivered.

Q. Delivered where?

A. Delivered either here or in the uptown yard. They just come in free and easy without any obstructions, or without any requirement for advance notice, and are dropped.

Exam. DIAMONDSON: You mean they come in and leave the cars at any open track?

The WITNESS: Well, yes—not any open track, but generally these areas I have described—the Belt out here——

Exam. DIAMONDSON: The Belt between warehouses 3 and 4?

The WITNESS: That is right.

Exam. DIAMONDSON: And the Virginian is the so-called uptown yard?

Q. When cars are delivered at the Army base, are they spotted or placed for unloading by the delivering locomotive?

A. Well, at times when we have placement orders on the arrival of cars they are placed. Otherwise, they are set in the storage yard until such time as we receive placing orders for them.

Q. What is done with the cars when they are brought to the base?

A. Well, the Virginian Railroad, as a rule, drops their cars
181 in the storage yard known as the uptown yard. The Belt Line, as far as room is concerned, we try to confine it west of Hampton Boulevard, in Pier 1 yard.

Q. Who gives the instructions as to where those cars are to be left?

A. I do.

Q. You referred to Pier 1 storage yard?

A. Yes, sir.

Q. Where is that located?

A. Between Warehouse 3 and Warehouse 4.

Q. Now you stated that you are the one who gives instructions as to where the cars are to be left?

A. Yes, sir.

Q. When and to whom are those instructions given?

A. Well, they are given first to the Yardmaster, to the delivering railroad, and at times the train will come in without any instructions and the conductor will receive them when he gets in the yard.

Exam. DIAMONDSON: Are those written instructions?

The WITNESS: No, sir, they are not. There are only written instructions as to placing of cars, not as to setting them in storage yards.

By Mr. KREBILL:

Q. Is there some general understanding as to where the Virginian and the Norfolk Belt will leave the cars when they bring them into the base?

182 A. Yes, sir.

Q. What is that understanding?

A. Well, the understanding is the Virginian Railroad will always put their cars in the Uptown Yard unless otherwise told to bring them direct to the piers. The Belt Line will not carry any cars in the Uptown Yard as long as he has room below down here for it, unless he was instructed to carry them by there.

Q. Are you or someone acting for you, on duty at all times when cars are delivered at the base?

A. Yes. We do have at this particular time a clerk. We have a Yardmaster on duty from 8 to 4:30. We have a Yardmaster on duty from 4:30 to 1. Now we have a yard clerk on duty from 1 until 9 a.m.

The WITNESS: That is right. And the instructions that we give, that you are bringing out, have to do really with placement.

By Mr. MEYER:

Q. Of course you must know the cars that are coming in?

151 A. I have already testified we get a phone call, yes. They usually tell the Yardmaster that a number of cars are coming in. He gets the car numbers from our office.

Q. Do Stevenson & Young, with respect to this Army freight, exercise any of the managerial functions that a terminal operator ordinarily does?

A. I can't answer that question, sir. I don't know what managerial functions a terminal operator normally does.

Q. I am referring particularly to the instructions with respect to the placement of cars in the base.

A. No.

Q. So their functions are confined, are they not, entirely to providing you, the Army, with labor for the unloading and loading of cars and other services of that kind?

A. That is substantially correct.

Q. Do you ever order cars placed before the cars arrive at QM Junction?

A. I am not sure as to that. We may know. We may very well know ahead of the physical arrival of the cars that they are going directly to a certain pier, and in that case I presume we could get instructions as soon as the conductors or the crews arrive, and have them put right in. I don't think it is the usual practice.

Q. Colonel, you testified I believe, that 50 percent of the cars go directly to the piers without having been unloaded to ground
152 or warehouse storage previously. Do you have any idea as to how many of the cars are placed for unloading at the piers by the railroads?

A. I would estimate between 60 and 65 percent of those that move directly down are placed by commercial crews. Again we haven't any statistics at hand, but they could be developed.

Q. I asked you what proportion are placed by railroad crews, and you answered in terms of commercial crews.

A. I meant railroad crews.

Mr. MEYER: I don't believe I have any further questions, Mr. Examiner.

Mr. REYNOLDS: I have just a few.

CROSS EXAMINATION.

By Mr. REYNOLDS:

Q. As I understand it, a large part of this traffic moving through the base went to Blue Jay, and the men doing the work there, the company doing the work there, were the North Atlantic Constructors, is that right?

A. What period of time are you referring to, sir?

Q. I'm referring to the period of time when the traffic moved to Blue Jay.

A. Perhaps I can enlighten you by saying the traffic for Blue Jay is a continual operation. We hardly ceased the 1951 shipping season, when we started to receive cars for '52.

Q. You are receiving cars currently now for Blue Jay?

A. Yes.

153 Q. Isn't it a fact the men doing the work there are known as the North Atlantic Constructors?

A. Yes.

Q. How is that traffic consigned? Is it consigned to the North Atlantic Constructors?

A. No, it is consigned to Port Transportation Officer, Hampton Roads Port of Embarkation, Norfolk, Virginia, the same as all other Army freight.

Q. There is no indication that the traffic, so far as the billing is concerned—there is no indication the traffic is intended for Blue Jay?

A. Yes. Normally it says also "For Project Blue Jay".

Q. I can't hear you.

A. Normally it also says, "For Blue Jay", on the shipping documents.

Q. Well now is that true of other traffic that is exported, that is to say, does the billing show to what destination or for what project that traffic is destined?

A. Yes.

Q. Now besides export traffic, you also have what was described as port traffic. That is the traffic used at the base, is it not?

A. That is correct, sir.

Q. What is the proportion of the export traffic and the port traffic?

154 A. I haven't those figures exactly, I'm sorry. I can only say that the traffic which we call "port stock", consisting of lumber, office supplies, coal, that sort of thing, would be a very small percentage of the total traffic moving through here.

Q. Well now, all of the so-called port traffic is used here at the base, or is some shipped from the base to other Army installations?

A. Almost 100 percent of the export traffic coming in here is exported through this facility.

Q. I'm talking now about the port traffic.

A. Oh, I beg your pardon.

Q. Is all the so-called port traffic used here at the base, or is some shipped to other Army installations?

A. It is all consumed here, sir.

Q. All consumed here at the base?

A. Yes.

Q. Well now, when you get lumber, for example, do you use that lumber to make things out of? Do you process it, in other words?

A. Some of the lumber that comes in is for construction purposes.

Q. Beg pardon?

A. Some of the lumber that arrives is for construction purposes. The large majority of it finds its way into dunnage aboard ships, blocking and choking material.

Q. Is any of it made into pallets?

A. We're having some pallets made, sir. I don't know from
155 whose lumber, I'm sorry. We are having some pallets fabricated. I believe they were shipped in, disassembled, if I recall correctly, and they were just being assembled here. I don't think we are making pallets out of any lumber that has come in. To the best of my knowledge we are not.

Q. Now Stevenson & Young handle both Army freight and commercial freight, is that right?

A. That is right.

Q. Do they maintain separate crews for commercial freight, as distinguished from Army freight?

A. Not that I know of.

Q. In other words, a crew may work on Army freight this morning, and commercial freight this afternoon, is that right?

A. So far as I am able to ascertain it is the same personnel.

Q. But suppose a crew was working on commercial freight this morning, and you needed that crew to load or unload Army freight. Would you take the crew off of the commercial work and put it to work on Army freight?

A. No. We have a pretty good advance information as to what freight is arriving at this base, and we plan our work and production accordingly, and we are able to tell pretty much—as a matter of fact we must order our labor from Stevenson & Young by 4 or 4:30 the day before the work is to be performed—so that the Army requirements for labor would be well-known by Stevenson & Young a day ahead.

156 Q. Suppose for some reason or another—

A. They would be able to hire whatever additional person-

nel they would need for their commercial freight. There would be no interchange.

Q. Suppose for example they weren't able to get all the men they needed to handle the Army freight, would you then take the crew working on the commercial freight and put them to work on the Army freight?

A. We wouldn't do any more than tell Stevenson & Young that we have so many cars that require unloading tomorrow. They would have knowledge of their own freight, which I have no knowledge of, and they would take our requirements and get the work done by whichever gang they wished to assign to it.

Q. All right. Tomorrow comes, and they don't have enough men to handle your freight and commercial freight. In those circumstances, would the crew that is working on the commercial freight be taken off that work and put to work on Army freight?

A. I should think you would have to direct that question to Stevenson & Young.

157 Q. Well, isn't it a fact, Colonel Smith, that Army traffic is given preference over commercial traffic, by Stevenson and Young?

A. Not that I have any knowledge of.

Q. You do not know whether they do or do not; is that right?

A. I have no reason to believe there is any priority given to military freight at all.

Q. Don't you require Stevenson and Young to give preference to military service?

A. No, we do not.

Q. I didn't say did you, I said could you?

A. Could we?

Q. Yes.

A. I presume in the case of a national emergency we might be required to take some such action.

Q. As a matter of fact, this base is being operated primarily for Army freight, is it not?

A. Yes.

Q. And commercial freight is more or less incidental, that is to say, it is handled, but doesn't interfere with the handling of army freight, isn't that right?

A. We have no cognizance of the commercial freight at all, sir. Stevenson and Young are going to testify later in this hearing, and I am sure they can give you the answers to your question.

158 Mr. REYNOLDS: I believe that is all.

Mr. FISHWICK: I have a few questions.

middle track in there which could serve either track if you care to double-spot the cars. So we use that middle track. There are 3 tracks between 2 and 3 warehouses.

Exam. DIAMONDSON: Do you ever take any empties cut to the Uptown Yard?

The WITNESS: Well, if we have an overflow of empties that we couldn't store in 2 or 3 middle, prior to the Virginian coming here, yes, we would take them to the Uptown Yard. That only happens very seldom.

By Mr. KREBILL:

Q. Does either the Virginian or the Belt Line ever assemble and pull out empties?

A. Why, yes, because if the Belt Line went down to set up a track, and there were empties in there, he would remove the empties before placing his loads in there.

Q. And take them on out of the base?

A. Well, he would put them in his delivery track out here.

Exam. DIAMONDSON: He would set them in on the assigned track for empties before he set in his load?

The WITNESS: That is right, sir.

187 By Mr. KREBILL:

Q. Do you have anything to do with respect to cars handling commercial freight, that is, other than military freight?

A. No, sir.

Q. Have you observed how those cars are handled?

A. Yes. They are handled in the same manner that we handle our cars. They are dropped in the yards here, and when placing orders are received for them, they are cut-out and placed down to the unloading point.

Exam. DIAMONDSON: Do the Army engines ever do any of that work?

The WITNESS: No, sir.

By Mr. KREBILL:

Q. When a string of cars is brought into the Army base, does that include both military and commercial freight?

A. Yes, sir.

Q. Do you know whether cars of commercial freight are unloaded into warehouses or on the piers?

A. Yes, they have both places. They use the warehouse and the piers.

Q. Do you know who issues the instructions to the railroads for the placing of such cars?

A. Stevenson & Young. Mr. H. G. Brown, instructs Mr. Kimbrough of the Belt Line Railroad.

Q. Have you observed any differences in the yard movement of such cars—I have reference to the commercial cars—
188 either to warehouses or the piers from the manner in which cars loaded with military freight are handled?

A. No, sir.

Exam. DIAMONDSON: If the Virginian brought in a string of cars containing commercial as well as military freight, and left it in the Uptown Yard, would the Army engine go out there and drill out the Army freight and leave the commercial freight there in that yard?

The WITNESS: He would, yes, sir.

By Mr. KREBILL:

Q. Does Stevenson & Young operate a locomotive on the Army base?

A. They have one, but they haven't operated it for the past 12 months.

Q. Did they operate it while you were employed by that firm as Yardmaster?

A. At times, yes, sir. Not at all times. At the peak of business they operated their engine to help out.

Q. What was it used for?

A. Well, it was used for—mostly it was used on this bulk loading. That is where you had to do a lot of weighing and a lot of extra spotting. That engine was used mostly for that, more or less of, you might say, giving stand-by service to a ship.

Q. Do you happen to know who owns the railroad tracks on
189 the Army base?

A. To the best of my knowledge, the U. S. Government owns all the tracks in the Army base.

Q. Let me show you the drawing which has been marked Exhibit No. 3, and on this drawing I notice that the lead-in track from the North Gate, which is located east of Warehouses 4 and 5, is marked "Norfolk & Portsmouth Belt Line Railroad".

Would you have any idea as to why it might be marked that way? Does that indicate that is railroad ownership, or is that the track which is used by that company?

A. That is the track which is used. I have no knowledge that the Belt Line has any track of their own in the confines of the base.

Q. I see. You feel, then, that is marked merely for the purpose of identifying the track?

By Mr. FISHWICK:

Q. When you said a moment ago you had no cognizance of the commercial freight at all, does that mean you regard that as a sort of separate operation, the same way you would regard commercial freight moving over other piers?

A. I think generally. I don't know what they have, how much they have, or where it goes at all.

Exam. DIAMONDSON: Did you mean that you had no jurisdiction over that—over the handling of that commercial freight at all?

The Witness: That is right.

By Mr. FISHWICK:

Q. The handling of commercial freight by Stevenson and Young does not interfere in any way with the movement of Army freight, does it?

A. Not that I know of. It hasn't interfered to the best of my knowledge.

Q. You stated that in your judgment about 50 per cent of the cars of military freight moving in eventually moved to the piers for unloading without having been previously unloaded either to open or closed storage.

What other per cent would be unloaded to open or ground storage?

A. Well, estimating only again—

Q. Yes.

159 A. I would imagine about 35 percent would go to open storage, 15 per cent to closed storage. But that could be developed accurately if you wish. That is only an arm chair guess.

Q. And then I believe you said that of the 50 per cent which moved to the piers, about 60 to 65 per cent of that eventually was moved down there by the railroads.

A. Yes.

Q. Of that 60 to 65 per cent, what percentage was moved to the piers by the railroads, in one single continuous movement?

A. I wouldn't know. I think maybe Mr. Jones, the yardmaster, could give you a better slant on that than I could.

Q. A short time ago Mr. Krebill said that a witness would be in a position to testify as to what the Army expected the railroads to do. I gather from your previous answers to questions by Mr. Cousins, that you are not that witness; am I correct?

A. We have a traffic witness coming up.

Q. Well now, are you the person in the Army who decides or decided that this complaint should be filed?

A. No, I am not.

Q. If the traffic witness that witness?

A. Yes, sir.

Q. Which the Norfolk & Portsmouth Belt ordinarily uses in delivering cars?

A. Yes, sir.

Mr. KREBILL: That is all I have on direct examination.

Exam. DIAMONDSON: Do you have any running tracks through this Pier 1 Yard?

The WITNESS: Yes. We use No. 3 track mostly for running track.

Exam. DIAMONDSON: Do you keep that clear?

190 The WITNESS: We endeavor to keep that clear at all times.

Exam. DIAMONDSON: How about the Uptown Yard? Is there a running track?

The WITNESS: You have two there. You have two main lines there. You have one on what is known as the "U" side, which would be the North side, then you have one on the south side—two running tracks. This is separate from the yard. There are 7 yard tracks on the north side, and there are ten storage tracks on the outside, with a main line serving each one.

Exam. DIAMONDSON: That is, you can switch into any of these tracks from the main line?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION.

By Mr. COUSINS:

Q. Mr. Jones, under what circumstances do you give instructions to the railroad Yardmasters for bringing cars to the pier—to the base, I should say?

A. Well, I get from the Virginian Railroad, he will call and say he has a certain number of cars, and he would leave at such and such a time. I tell him there is plenty of room in the Uptown Yard, and he will then drop his train there and proceed down here to receive any placing orders, if we have placing orders of those cars we give them to him at that particular time. Otherwise, his instructions are that there is room in the Uptown Yard for his train.

191 Q. Now when he tells you that he has these cars, he tells you what they are by car numbers?

A. No, sir.

Q. And billings, doesn't he?

A. He does not.

Q. He doesn't tell you what the consist of the car is?

A. No, but the car desk—he has in turn given it to the car desk.

Q. He has given it to somebody else on the base?

A. Yes.

A. The traffic witness is from that same office. I think Colonel Gray testified rather clearly that he caused the complaint to be filed.

Q. I see. Now, of the tonnage military traffic moving into the base here, what percentage of it is processed in any way?

160 A. We do, as Colonel Weed has previously testified, we do have to make an inspection, and do some processing on vehicles. In some cases vehicles are shipped direct from vendor's plants in here, without the benefits of depot inspection, and we do have to perform certain exterior processing, as Colonel Weed indicated, to protect the material from the ocean, or from sea water. I don't know what percentage it would be.

Q. In the event there is no depot inspection, is it the responsibility of this command to make an inspection to determine whether the materials satisfy the government specification?

A. Not as to specifications, particularly, but there is a technical service inspection required on ordnance items, including vehicles.

Q. Well now, take motor vehicles. Of what do those technical services or inspections consist?

A. I am sorry, sir, I am not in the motor vehicle inspecting business here. I can't answer your question, except in a very general way. We aren't set up to—this facility is not set up to do any large-scale processing, but there is a sort of technical inspection by the ordnance and chemical officer, working under directives from the Chief of Ordnance to insure that the processing at the depot, or the manufacturer's plant, has been done completely, in accordance with some pre-arranged specifications.

Q. Yes. Now from a—

161 A. He does that.

Q. From a transportation standpoint, what do you do with those shipments? How are they handled?

A. They are handled two ways. They are handled both directly to the piers, and they are unloaded if some processing has to be done, and then moved down under—normally towed to the piers, when the ships can take them.

Q. In the event they are moved down later, are they first unloaded to ground storage or closed storage?

A. Outside—ground storage.

Q. Ground storage?

A. Yes.

Q. So that after these vehicles are unloaded, it is necessary for the Army to permit its ordnance depot to make some inspection of those vehicles?

A. Yes, that is right.

Q. Are there any other commodities, on which you perform similar processes—comparable processes?

Q. And if you are able to tell him where to place the cars, they are placed by the railroad at that time when they are brought in here, is that right?

A. Yes, sir.

Exam. DIAMONDSON: Oral instructions?

The WITNESS: Well, they may be oral instructions on the phone, but they are confirmed with written instructions when the Conductor gets here.

By Mr. COUSINS:

Q. Now, did you say that your Army base locomotives never move commercial cars?

A. Well, we never place commercial cars. We would have to move a commercial car if it was in the same track of cars that we wanted to get out.

Q. And you do switch commercial cars from one track to another, do you not?

192 A. No, we wouldn't. We put it back on the very same track after cutting our cars out of there. Because the train comes in with these cars mixed in it, and if it is necessary to get Army cars out of there, we would switch the Army cars out of there, but the commercial car would go back on the very same track it came out of.

Q. Have you no knowledge of commercial cars that have been delivered to the piers by your locomotives?

A. No, we don't deliver any to the piers.

Q. Are you sure of that?

A. Yes, sir.

Q. How about delivering commercial cars to warehouses?

A. No, we don't deliver commercial cars to warehouses.

Q. Are you sure of that?

A. Yes, sir.

Q. What would you say if our records show that you do?

A. Well, I have no knowledge of it being done. I don't give any orders to place any commercial cars.

Q. Are there any circumstances under which your Army base crews might deliver commercial cars to the piers or warehouses without orders from you?

A. No, sir. They do not.

Q. So far as you know, it is just not done?

A. No, sir.

Q. Would you be surprised if our records show that it is done?

193 A. I would.

Q. Would you have any explanation for it?

A. None that I know of. That is about the only one that I am familiar with. There may be some inspection of foodstuffs, if they go through here, by the Quartermaster representative. There might be a little of that; I am not qualified to say.

Exam. DIAMONDSON: Let me ask one question, please.

Mr. FISHWICK: Yes, sir.

Exam. DIAMONDSON: Could inspection be made of those
162 vehicles while they are in the car, or do they have to be unloaded.

The WITNESS: They can be made while they are on the car, and probably would be, unless it was determined they had to be unloaded to do the work more efficiently.

Exam. DIAMONDSON: What is the usual custom now? Do they make that inspection after unloading it, or while it is still on the car?

The WITNESS: Well, I think they make it on the car, sir, as far as I know.

Mr. FISHWICK: These other commodities such as food, do they have to be unloaded to be inspected?

The WITNESS: I don't know, sir. I don't know the answer to that question.

By Mr. FISHWICK:

Q. Take the ordinary——

A. We don't do any——

Q. —ordinary packaged shipment. Do you perform any inspection to determine whether it is properly or suitably packaged?

A. No. The port transportation division only sees the boxes or packages as they are unloaded, to see if there has been any in-transit damage?

Q. Who does that?

A. Stevenson and Young does it.

Q. Stevenson and Young does all the checking to see that the packages are not broken?

A. That is right.

163 Q. Is there any check made by anybody to determine that the kind of packaging is proper for the particular commodity?

A. I think only as to its general suitability for movement overseas.

Q. Now, is there any import freight being handled over the piers?

A. Very, very small amount. We have occasional shipments from the Pacific area, inbound.

Q. Is that import or intercoastal?

A. It is import and intercoastal.

Q. Do you have any coastwise traffic?

A. Well, if a certain instance was brought to my attention, I might give an explanation; I am not sure.

Q. Your Army crews deliver a good many of the Army shipments to the piers, do they not?

A. Yes, sir.

Q. How many hours of the day are your three Army locomotives working on the base?

A. We have two men from 8 to 4:30, and we have one from 4:30 to 1 a. m.

Exam. DIAMONDSON: Do you keep a written record of the switching performed by the Army engines?

The WITNESS: I give them a written order the same as I do the other conductors.

Exam. DIAMONDSON: I mean do you have a record of actually the work done by those engines during those tricks?

The WITNESS: Yes, I have a record of the work they perform.

By Mr. COUSINS:

Q. Now, when your Army locomotives are working on the base, how many railroad locomotives may be working at the same time?

A. Well, very seldom over one of them. For instance this morning, we had both of them in, the Virginian and the Belt Line were both in here at the same time.

Q. Who has the right of way between the railroad locomotives and your locomotives?

A. Well, I wouldn't say that anyone has the right of way. It is a matter of c-urtesy to try to work together. It is not the policy to try to give any right of way to any particular—we may give right of way to one particular movement that we wanted first. Other than that, we would give no right of way.

Q. When there are several locomotives working on the base at one time, they are all working under your instructions, are they not?

A. Yes, sir.

Q. To what extent do your own Army locomotives interfere with the movement by railroad locomotives and crews?

A. Well, I would say there is no interference.

Exam. DIAMONDSON: If you were in on a tract with an Army engine, doing some shifting on that track, and the Virginian wanted to come in there, do you make the Virginian stand by until you got through?

The WITNESS: Well, the same thing if the Virginian was doing switching on the track, I would make the Army engine stand by until he completed.

A. None that I know of.

Exam. DIAMONDSON: That is inbound, or outbound, coastwise traffic?

The WITNESS: None that I know of.

By Mr. FISHWICK:

Q. You spoke of domestic freight. As I understand it, all of the domestic freight moves into closed storage; is that correct?

A. No. Some materials are stored outside. You don't put coal in the warehouse, normally.

Exam. DIAMONDSON: Lumber?

The WITNESS: Lumber.

By Mr. FISHWICK:

Q. On the domestic freight, how do you designate domestic freight on your bills of lading?

A. I don't prepare the bill of lading, of course. I just
164 receive it and accomplish it. Lumber, for instance, is normally consigned to the consolidated supply division, based on their purchase orders. Coal is usually consigned to the Post Engineer, I believe.

Q. Is any of the domestic traffic consigned to the Transportation Officer?

A. Yes, I imagine some shipments are.

Q. On that traffic, how do you expect the railroads to determine whether it is domestic or export freight?

Exam. DIAMONDSON: It isn't moving on an export bill, is it?

The WITNESS: No, it is not billed for export. It has no overseas destination or code on it.

By Mr. FISHWICK:

Q. In other words, it doesn't have "for export" stamped on it; is that a domestic shipment, or unless it has an export bill.

A. That is right, generally speaking. It is very easily identified.

Q. I noticed in your exhibit, which I don't have a number for—

Exam. DIAMONDSON: Exhibit 6.

By Mr. FISHWICK:

Q. In Exhibit No. 6, which you have written to the railroads, asking them to reply to grants for wharfage and handling services. You didn't ask the railroad to perform those services. Why?

By Mr. COUSINS:

Q. The fact of the matter is, you treat them all like one unified operation, and give the instructions according to what you think is the most efficient method of operating the base?

A. Yes, sir.

195 Q. As a matter of fact, you can't avoid some interference of one crew with another, and some delay?

A. No, sir.

Q. How many times would you say a railroad crew is required to move a car around on the base from one place to another?

A. You say the railroad crews?

Q. Yes.

A. Well, he only makes one placement of a car. Now I mean the placement for unloading.

Q. Yes.

A. He brings the cars into the storage yards, and he makes an initial placement of that car when ordered to the unloading point.

Q. All right. Now, before that is accomplished, how many times might the railroad crew have to move that particular car?

A. Well, it wouldn't be necessary for him to move it at all, other than maybe to put more cars on the track, and shoving it down, or he may have to cut cars out below that car, and switch it out.

Q. Isn't it a fact that at times he actually has moved such a car 3, 4, or 5 times, from one place to another?

A. No, not from one place to another. He might have moved that car down on the same track 2 or 3 different times, but not from one track to another, no, sir.

Q. Not from one track to another?

196 A. No, sir.

Q. How about your crews, have your crews moved that car from one track to another before the final placement is made?

A. Well, at times you have to do a certain amount of classifying for any freight.

Q. Who does that classifying?

A. Well, the engine that is—in other words, if an engine comes in to switch a track, and he has cars in there going to 3 particular places, I would call that classifying when he cuts the cars out for each individual placing that he was going to make. I would consider that as classifying, prior to making placement.

Q. That is done—you are talking about railroad crews now?

A. I'm talking about any crew.

Q. Both kinds?

A. Yes.

Q. All right. Now, don't you also require these crews to classify cars according to the commodities they contain?

A. I think the letter is fairly clear, what I intended to ask.

165 Q. Well, it is clear to the extent that you asked only for an allowance, and don't ask the railroads to perform in the alternative. Did you fail to ask them to perform because you didn't want them to perform?

A. The letter is phrased, I think, fairly well, and it indicates that certain allowances are made in this port to Stevenson and Young on commercial freight. This letter interrogates the carriers as to whether or not they are entitled to the similar allowance in respect to our freight which they also handle.

Mr. FISHWICK: I would like to ask the reporter to read the question. I don't believe the witness' answer is responsive.

Exam. DIAMONDSON: Read it, Mr. Reporter.

(Question read.)

Mr. FISHWICK: I don't believe that question has been answered, Mr. Examiner.

Exam. DIAMONDSON: Could you answer the question more directly, Colonel? Your answer did deal with the question of getting the same service through Stevenson and Young as the commercial shippers got through Stevenson and Young.

The WITNESS: What is it that you wish to know, sir? If you will restate your question.

Mr. FISHWICK: I think the question is perfectly clear. If you don't understand it, I would like to have the reporter read it again.

166 The WITNESS: I think the answer is quite clear, too.

Exam. DIAMONDSON: Do you want the question read again?

Mr. FISHWICK: Yes, sir.

Exam. DIAMONDSON: And the answer?

Mr. FISHWICK: I would like the question. I don't think the answer is responsive.

Exam. DIAMONDSON: Let's have the answer as well, and see whether it is responsive.

(Question and answer read.)

Exam. DIAMONDSON: I think the answer is responsive.

By Mr. FISHWICK:

Q. At the time this letter was written, did you want the railroads to perform the handling and wharfage services involved in this proceeding? As opposed to making an allowance for such services?

A. I don't know that I considered it, if you want to be perfectly honest about it. I merely addressed this letter because I felt that what we were asking for here, namely a wharfage and handling allowance, was justified.

Now, as to the alternative, I don't know that the question entered my mind, actually.

Q. Can we assume that at the time you wrote this letter it was not the Army's position that the carriers should furnish handling and wharfage services as opposed to making an allowance therefor?

A. I can't state as to the Army's position, sir, at the time
167 I wrote this letter. I wrote this letter here from Norfolk.

The Army's official position was being maintained, independently, perhaps, in Washington.

Q. May I ask, are you familiar with the documents which you require Stevenson and Young to furnish you when they unload cars?

A. Generally, yes.

Q. Now, when they unload a car of freight, how many copies of their unloading report do you require?

A. We only actually require their certification on certain copies of the War Department's shipping document, which comes in some 11 copies with the freight, usually in the car itself. We require a signature from them showing that the freight has been unloaded, and with exceptions, if any, and that they prepare certain interior documentation and reports of their own on which to compute the tonnage that they have unloaded for us, and eventually invoice us for that tonnage.

Q. Now these 11 documents, are there 11 documents with each package that is covered by an individual bill of lading?

A. Normally so, yes, with each shipment.

Q. With each shipment?

A. Yes.

Q. You require them to sign 11 copies?

A. No—I am not sure whether we do or not. I am not sure. But
168 we require their signature on certain of those—two I know of—one to accomplish our bill of lading, to support our bill of lading, and another for what we call our tally file, within our office, which gives us an indication of what has arrived on the base, and where it is.

Q. When they unload, for instance, in a closed warehouse, do you require them to unload in any particular way? For instance, if a car is loaded with a number of commodities, do you require them to put them in separate piles?

A. We tell them generally where to place the material in the warehouse. They segregate it themselves, and they take note of where it is placed and how it is stored, so that when we ask them to come and get it they will know where to go and can secure it quickly and see that it is moved down to the piers.

Q. When goods are stored, either opened or closed storage, do you make any check of it after it is unloaded, between the time

A. Only at times when he brings the train in here, and I see that he has a bunch of vehicles. When he shoves that train in, why naturally he wouldn't shove the vehicles in on the same track mixed up with a string of box cars. He would set the vehicles on one track, and the other freight in another track. That is all in his initial movement of putting the cars in the storage yard.

197 Q. How about pipe?

A. Pipe?

Q. Don't you tell the railroads where you want the pipe—cars of pipe placed?

A. Well, the pipe—we place all the pipe, you might say, in the open area. It would be unloaded before it goes to the ship, for loading on flat cars, but the Army engine does that type of work.

Q. Don't you direct the railroads to classify carloads of pipe, for example, to get all the cars together?

A. Well, if he comes in with a train, and he has 4, 5, or 6 cars of pipe in that train, yes, I would tell him to set that pipe over—not to bury that pipe down—he would set the pipe on another track.

Q. That is classification, isn't it?

A. Yes, it would be considered classification.

Q. Now, when you are having the railroad crew deliver cars to piers, don't you require them to standby, until they can get into the pier, doesn't that entail delay to the railroad crews?

A. Well, he doesn't standby to get into the piers. If you were going to say if he goes down there long enough to wait to get the 15 or 20 minutes—in order for them to get cleared up below him—if you call that standby, yes, because he couldn't deliberately go there and shove any track without determining the track was ready to be shoved in.

198 Exam. DIAMONDSON: Would he have to pull out any empties before he shoved down onto the pier?

The WITNESS: Yes, sir.

Mr. KREBILL: That is, if there happened to be any empties there?

The WITNESS: Yes, sir, if there were any empties there. In fact he would have to take the empties out to make room to get the loads in.

Mr. COUSINS: That is all I have, Mr. Examiner. Thank you.

Exam. DIAMONDSON: How many men do you have in a crew in the Army engine?

The WITNESS: I have four men. I have an engine man, a conductor, and two brakemen.

Exam. DIAMONDSON: I don't believe I am quite clear on one thing, Mr. Jones. As I understood you, if you didn't issue any

instructions at all to the railroad, the Virginian would leave the cars in the Uptown Yard?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: And the Norfolk Belt would bring it into this Pier 1 Yard?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: Then you said if you have a placement order. Now let's assume that one of the cars that you want to issue a placement order for, is for open storage. Would you give him a written instruction to place that car on a particular track?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: In a particular location on that track?

The WITNESS: No, no particular location.

Exam. DIAMONDSON: The same thing for a car that you want placed at a warehouse?

The WITNESS: I would give him a location on that, because they are designated by letters as to each warehouse section—each warehouse section is lettered. They would be all the way from A to L and M.

Exam. DIAMONDSON: You designate the warehouse and the portion of the warehouse where you wanted that car spotted?

The WITNESS: That is true, yes, sir.

Exam. DIAMONDSON: Now if the car is to go down to the pier, Pier 1, for example, you would give him the written instructions to take it down to either the well track, or the apron track on that pier, would you not?

The WITNESS: That is right. We would designate the track number, and the location there for it.

Exam. DIAMONDSON: Proceed.

CROSS EXAMINATION.

By Mr. MEYER:

Q. When, and how, do you first learn that the Virginian Railway has cars that are ready to be brought into the Army base?

A. By telephone from the Yard Office at Sewell's Point.

200 Q. In other words, the Virginia telephones you and tells you that it has a certain number of cars that are available, ready to be brought into the base?

A. Yes, sir.

Q. They always do that, do they?

A. Yes, sir.

Q. Then what happens? What do you do? Do you tell them to place them in some specific location?

it is unloaded and between the time it is ultimately taken down to the piers for transshipment?

A. Well, yes. We have certain supervisory personnel that are in the area.

Q. Well now, are they Stevenson and Young's employees? In other words, they are your people who make this check?

A. Yes, sir.

Q. When they make this check, do they make it on the basis of the bills of lading, or copies of the shipping papers?

A. Well, it isn't a recheck, if that is what you mean. If a 169 car is unloaded by Stevenson and Young, our people don't go and recheck that car. We accept their certification the same as anyone else would.

Q. Yes.

A. That certain cargo has been unloaded and stored in a certain place.

Q. Yes, but if you had—

A. I thought you meant a security check, actually. There are certain security checks or security measures taken.

Q. How do they make that security check, do they use the shipping papers as a stepping-off place for it?

A. Well, no, what I had reference to was the general policing of this base. We have certain personnel at the disposal of the Provost Marshal, who constantly guard and protect the entire enclosure. That is what I mean by security check.

Q. What my question was directed to was this: Does Stevenson and Young have to store or unload the cargo or shipments in any particular way so that you can later make some sort of security or other check in a convenient way?

A. Well, they have to so store the cargo, and segregate it, that they themselves can get it quickly to move it down to the piers when it is needed. Does that answer your question?

Q. Well, no. I understand that they would store it so that they could conveniently do their job, but they have to store it in such a way that it will enable you to conveniently do some other 170 job that the Army undertakes?

A. No, all of the handling of this is by them.

Q. Well now, do they have to—in a normal commercial shipment that is put on a pier, for instance, moving out of a car, it would all be stored and picked up later and put in a ship. Does Stevenson and Young have to unload shipments in opened or closed storage, in such a manner that they can get parts of a carload—small parts, perhaps—know where that is, so they can move it down to the piers on short notice?

A. That is right, a part of a carload, but more accurately an entire carload or five carloads at once.

Q. Yes. But they have to know so much about it, that they could get out a small part of it, package freight, and know precisely where that is, isn't that true?

A. I presume so. That isn't the usual manner of handling. If we get a carload of merchandise in, and it is in the warehouse, the car will be ordered out.

Q. Yes, but isn't it true you want and expect Stevenson and Young to be able to tell you where all of your cargo that is waiting transshipment is, so they can get it on short notice—very short notice?

A. That is correct, sir.

Mr. FISHWICK: I believe that is all I have.

Mr. REYNOLDS: I wonder if I might ask the witness two questions. They are not going to be long.

171 By Mr. REYNOLDS:

Q. Do you give the carriers, the line-haul carriers, notice that traffic coming into this Base for export has actually been exported?

A. Yes.

Q. You do?

A. Yes, we do.

Q. Do you do it personally, or people under your direction?

A. People under my direction put a stamp on the original bill of lading, which says "I certify this shipment is for export."

Q. After it has been exported, if it has, do you notify the line-haul carriers of the fact that the shipment has been exported?

A. We do it through the manner that I am explaining to you, by agreement with the local lines, that when the bill of lading is accomplished there is a stamp goes on, over my signature, which indicates that the shipment is being exported, or has been exported. It is the same stamp. And if a shipment comes in here, and is not exported, and for some change it would have to be reshipped to an interior depot, we would then notify the carrier in writing, indicating that there has been a change, and that the shipment was not exported, requesting that it be put on the domestic basis, and with a copy to the General Accounting Office and the Washington Finance Office, probably.

Q. Within what length of time do you give them notice?

A. In a very few days, as soon as we find the shipment is not going over the piers.

172 Q. I understood from one of your answers in some instances, freight that comes into the Army Base for export is not exported, but is shipped to another Army installation in this country?

A. No, I don't believe I said that, sir.

A. I tell them that there is room in the Uptown Yard. I don't designate a track up there for him, because he may have to—up there you have ten tracks. If he has—say he brings in 16 or 17 cars, he would try to pick a track that would hold all of his cars. In other words, he would take the longest track, and pull in first.

Q. But he does await advice from you in connection with his telephone notification to you, to bring them into the Uptown Yard. The Virginian does not bring the cars into the Uptown Yard, without notifying it is going to do so, does it?

A. Well, there is nothing preventing him from doing it, but they don't. They call before, prior to leaving.

Q. When you say there is nothing preventing him from doing it, do you mean you have a kind of standing arrangement?

A. Yes.

Q. With the Virginian, whereby they can bring them in there?

A. Yes, sir.

201 Q. Directly if there is room?

A. That is right.

Q. In point of fact they don't do that?

A. No, they don't. They always call prior to coming in.

Q. Now for the most part the instructions for specific spotting or placing are given after the cars are brought into the Uptown yard, is that it?

A. As I say, if I had the placement, when he leaves Sewell's Point, I will give it to him on the phone so that he can bring those cars direct to the pier as he comes. Otherwise, he will leave them in the Uptown Yard until such time that we do have placement orders.

Q. That same situation prevails with respect to cars brought in by the Belt Line, doesn't it?

A. Yes, sir.

Mr. MEYER: I think that is all.

Mr. REYNOLDS: I have no questions.

CROSS EXAMINATION.

By Mr. FISHWICK:

Q. Did I understand you do not act as Yardmaster for Stevenson & Young?

A. No, sir.

Q. You do not give any instructions whatsoever as to the placement of commercial cars?

A. Mr. Brown, through Mr. Kimbrough—that is the joint agent

for the Belt Line Railroad—very frequently asks me to pass an order on to his conductor. I do do that.

202 Q. Well now, isn't it customary for you to do that?

A. It is customary that I do pass that information to his conductor.

Q. All right. How about Virginian cars coming in?

A. I do the same thing for them.

Q. In other words, you really relay instructions to both railroads?

A. That is right.

Q. As to the placement of cars?

A. I am on the scene, and their Yardmaster is a considerable distance away. As a matter of courtesy to him I relay these messages on to his men working in here.

Q. Do you give them written orders on that traffic, too, or not?

A. I do.

Q. Who prepares that?

A. I just write it down, and I don't give any signature. I write that information down for him, because it is so easily—the verbal instructions of the car numbers, a man might get the wrong car number.

Q. Is there a Navy engine on the base?

A. Yes, sir.

Q. Do you have anything to do with that engine's operation?

A. No, sir.

Q. But it does operate on the base?

A. It does operate in the base.

203 Q. How many crews do you have operating your 3 engines?

A. We have 3 crews operating the 3 engines.

Q. Just the 3 crews?

A. That is all.

Q. How many hours a day do your engines operate?

A. 8 hours a day. They are really operating 16 hours a day, because we operate from 8 to 1 a. m.

Q. Yes.

Exam. DIAMONDSON: Does the Navy engine come down into the Pier 1 Yard?

The WITNESS: No, the Navy does not come to Pier 1 Yard. He goes into Pier 2 Yard, and all the outlying points such as Warehouses 6, 7, and 8, and the Navy leads. He doesn't come in Pier 1 Yard at all, because the Belt Line very frequently has Navy cars in there, but the Belt Line conductor always has the number of cars and initial of cars he has for the Navy, and he will cut those cars out himself without any instructions. He has those

Q. You said when freight was not exported, the carriers were informed of that fact.

A. Just now, yes. I know of a recent shipment involving some beans. It is very rare, but occasionally we do have a stop and hold, you might say, or a change in overseas requirements, they get the information down to us, and a car may be stopped on the piers and ordered not to go overseas, but be shipped back to depot. That has happened. It is very rare. In such cases we notify the carriers as I have told you.

Q. Is that just because of an error in shipping it to here, instead of shipping it somewhere else?

A. No, it might have been a change in overseas requirements, or a change in priority, or for a number of reasons.

Mr. REYNOLDS: That is all.

Exam. DIAMONDSON: Do you have any further questions, Mr. Krebill?

Mr. KREBILL: Yes.

REDIRECT EXAMINATION.

By Mr. KREBILL:

Q. Colonel Smith, do you expect the railroads to perform any service other than what they hold out to perform in their tariffs?

173 A. No.

Q. Or do you expect them to perform any service which they do not perform on commercial shipments?

A. No, I don't.

Q. How long have the flat cars which are used here on the base been on the base?

A. We got them in last summer. I would suggest they came about the last of June.

Q. How were they moved when they were brought here?

A. I don't know. I wasn't the Port Transportation Officer when they arrived. I don't know how they were brought in here. They were probably shipped on their own wheels.

Q. You don't know, then, whether or not they were shipped on their own wheels?

A. I don't know actually. I presume they were.

Q. And if they were, no doubt they were in safe operating condition at that time, or they would not have been accepted by the railroad; is that right?

A. That is correct.

Q. In cross examination, you mentioned that you receive notice by telephone when cars arrive in the Norfolk area. About how long after you receive that telephone notice—about how much time after

you receive that telephone notice, passes, before the car is actually delivered here at the base?

174 A. Just a very few hours. The telephone notice comes at, say, late in the afternoon, at 2:30 or 3:00 o'clock, and those cars are delivered in here usually at midnight, the same night.

Q. Well, would there normally be sufficient time between the time you received the telephone notice, and the time when the cars actually arrive, for you to be able to give placement orders on those cars?

A. In some cases there would be.

Q. Would you say in most cases, or in few cases?

A. I would say in comparatively few cases.

Mr. KREBILL: That is all.

Exam. DIAMONDSON: Do you have any further questions?

Mr. KREBILL: No, sir.

Mr. FISHWICK: May I ask one question?

Exam. DIAMONDSON: One.

RECROSS EXAMINATION.

By Mr. FISHWICK:

Q. Do you have any system at all set up for inspecting your own equipment for compliance with the safety?

A. Yes, we have. We have it inspected and we have a program on now for repair of certain features of the cars that we know are slightly defective.

Exam. DIAMONDSON: Are there any further questions?

(No response.)

Exam. DIAMONDSON: You are excused.

175 (Witness excused.)

Exam. DIAMONDSON: We will adjourn at the time until 9:30 tomorrow morning.

(Whereupon, at 5:00 o'clock p.m., the hearing was adjourned, to reconvene at 9:30 o'clock a.m., Wednesday, March 26, 1952.)

instructions from his yardmaster, and put them into the delivery track for the Navy.

By Mr. FISHWICK:

Q. The Navy engine does operate over some of the same tracks?

A. Yes, sir.

Q. That the Army engines and railroad engines do?

A. That is true, yes, sir.

Q. How do you prevent interference between the Navy engine on the one hand, and the other railroad engines on the
204 other, unless you have some supervision over them?

A. Well, I really have no supervision, but these men have worked in and out of this base for a number of years, and I have been in here for a number of years, and if there is any particular place they want to go, they don't have to get permission, but they do let you know as to where they are working, and where they want to work. But I have no jurisdiction over them, that is all.

Q. Yes. But the Navy crew, for instance, would tell you where it was going on the base?

A. If he was going into Pier 2, no other places, it is his own individual places, and it wouldn't interfere with our operation, because he does not. That is out of our confines at all. Such as the annex up here, and around 6, 7, and 8 warehouses.

Q. But if he were going anywhere else?

A. If he were going into Pier 2, he probably will stop and want to know the condition down there of certain tracks before he went down.

Q. How often do you consult with the Navy crews about matters of that sort?

A. The Navy crew does very little pier work. I would say they don't operate into the piers, Pier 2, once a week. Most of their work is all into their warehouses.

Q. Now, on occasions, cargo is moved from ground storage on Army equipment down to the piers, is it not?

205 A. Yes, sir.

Q. Are those cars moved by Army engines?

A. Yes, sir.

Q. How many flatcars does the Army have?

A. We have 35.

Q. How many of those—do you know the condition of those cars with respect to safety appliances?

A. Well, they came in here with all proper safety appliances. They arrived in here over the Virginian Railroad.

Q. Have you made any inspections of them since?

A. No, I haven't.

Q. Has anybody to your knowledge?

A. Yes, I think the Army has made an inspection of them.

Q. Do you know when the last inspection was made?

A. No, I wouldn't have that information.

Q. Do you know whether any of those cars at present have bent grab irons?

A. Well, those cars are in constant use. There may be a car or two that might have gotten bent just since I have been up here, with a loading and unloading operation going on all the time.

Q. Do you know whether any of them have cut levers that are bent?

A. Well, I couldn't state positively that there is, and I wouldn't state positively that there are not.

Mr. FISHWICK: Would you read the last answer?

206 (Read back.)

Mr. KREBILL: Mr. Examiner, I am unable to figure out what this line of questioning has to do with the issues of this proceeding.

Exam. DIAMONDSON: These cars are not used in line-haul traffic.

Mr. FISHWICK: I realize that.

Exam. DIAMONDSON: They stay on the base at all times as I understand it.

Mr. FISHWICK: I realize that.

By Mr. FISHWICK:

Q. Do you ever use railroad equipment to move cargo that has been stored on the ground down to your piers?

A. No, sir.

Q. You never do that?

A. No, sir.

Q. Do you have anything to do with the movement of supplies or cargo from ground storage that does not move by railroad car but moves by truck?

A. No, sir.

Q. You do not have anything to do with that?

A. No, sir.

Exam. DIAMONDSON: Are most of the cars brought in by the Virginian left in the Uptown Yard?

The WITNESS: I would say 95 percent of them.

207 Exam. DIAMONDSON: Are left in the Uptown Yard?

The WITNESS: Yes.

Exam. DIAMONDSON: Then the Army engine goes out there and picks up those cars and brings them into the base, is that right?

176-177 Before the Interstate Commerce Commission

Docket No. 30939

In the Matter of UNITED STATES OF AMERICA V. ABERDEEN AND
ROCKFISH RAILROAD COMPANY, ET AL.

Stenographer's Minutes of Hearing of March 26, 1952

Conference Room, Port Headquarters Building, Hampton Roads
Port of Embarkation, Army Base, Norfolk, Virginia, Wednesday,
March 26, 1952.

Met, pursuant to adjournment, at 9:40 o'clock a.m.

Before: SAMUEL R. DIAMONDSON, Examiner.

APPEARANCES:

(As heretofore noted.)

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PROCEEDINGS

Exam. DIAMONDSON: The hearing will be resumed.

Mr. KREBILL: Mr. Examiner, in connection with Exhibit No. 1, which was offered for evidence yesterday, my attention has been directed to the fact that there is a typographical error in the letter from Norfolk and Western Railway Company, dated May 7, 1951. That is on about Sheet 20 in the exhibit. In the last line of the letter the words, "I suggest that you not do so," should read, "I suggest that you now do so."

Mr. Examiner, at this time I would like to offer in evidence Exhibits Nos. 2, 3, 4, 5 and 6. I am not offering Exhibit 1 at this time because the witness has not yet been cross examined.

Exam. DIAMONDSON: Any objection? Exhibits 2, 3, 4, 5 and 6 will be received in evidence.

(Complainants' Exhibits Nos. 2, 3, 4 and 5, Witness Weed, and No. 6, Witness Smith, received in evidence.)

Mr. KREBILL: I would like to call Mr. Jones as a witness.

FRANK R. JONES was sworn and testified as follows:

DIRECT EXAMINATION:

By Mr. KREBILL:

Q. Mr. Jones, will you state for the record your name and address?

A. Frank R. Jones. I reside at 5014 Killam Avenue.

Q. Will you speak up just a little bit louder so we can all hear.

The WITNESS: Well the Virginian engine will pick them up and bring them down to the base as ordered.

Exam. DIAMONDSON: Don't your engines go up there and pick up those cars?

The WITNESS: Yes, we do. We pick up some, yes.

Exam. DIAMONDSON: If the Army engine went to the uptown yard and picked up some Army shipments, and brought them in and left them in the Pier 1 Yard, does the railroad engines there after move them to the pier?

The WITNESS: No, we wouldn't move cars from the Uptown Yard to Pier 1 Yard. We would move cars from Uptown Yard to the piers, or to their unloading point.

Exam. DIAMONDSON: you wouldn't bring them into the Pier 1 Yard, and leave them there, and then move them later?

The WITNESS: No, sir.

By Mr. FISHWICK:

Q. Of the loads coming into this base, what percentage would you estimate is moved directly by the railroads to the unloading point without stopping off either at the Uptown Yard or Pier 1 Yard, or some other intermediate point?

A. You say without stopping?

208 Q. Without stopping, yes.

A. Well, that percentage wouldn't be over ten percent that doesn't stop.

Q. Yes.

A. Now, I don't mean now that is percentage that does go direct to the pier on placing orders. But you wanted an answer as to those within one move when they come in and go straight to the piers.

Q. Yes.

A. I would say not over ten percent.

Q. That would be the unusual rather than the usual thing?

A. That is right.

Mr. FISHWICK: That is all I have.

Exam. DIAMONDSON: Are there any further questions? Do you have any questions, Mr. Krebill?

REDIRECT EXAMINATION.

By Mr. KREBILL:

Q. Mr. Jones, in connection with these placing instructions, which you relay from the railroad's joint agent to the train crews, do you have any duty in connection with that?

A. No, I have no duties in connection with it. In other words, I am right there in the presence of his conductor. His conductor

is backwards and forwards in that office, he is out there performing his work. He would have to walk a distance from way up here out there to find that conductor when he is right there in my presence, right there. I merely relay the message to him.

Q. It is just a courtesy and convenience—

A. It is just a matter of courtesy, yes, sir.

Q. Now, in response to a question that was asked by Mr. Cousins, I understood you to say that when there are several locomotives, both railroad locomotives and Army locomotives, working on the base at the same time, that they are all operating under your instructions. Do you have in mind that some of those are handling commercial freight?

A. Well, yes, there would be some commercial freight in there.

Q. Well, do locomotives handling commercial freight operate under your instructions?

A. No, when he was making that particular move—he does that in connection with the other work.

Q. In other words, the reason that they are under your instructions is because there is military freight in the string?

A. Well, I may be a little bit wrong in saying they are under my instructions. Now he may have commercial freight that is going on the very same pier that the military freight is, and he makes it all in one operation.

Q. But if it had purely commercial freight?

A. If it was purely commercial freight, no, he would not be under my instructions.

Q. Even though there were several locomotives working on the base at the same time?

210 A. That is right.

Q. Now in connection with spotting or placing cars on the pier: Is there normally any delay encountered by the train crews moving those cars down to the pier?

A. Not if he arrives in here at the time he is ordered. In other words, to make a switch between 12 and 1 o'clock, when everything is lunch hour, if he is in here on time when he is ordered here, he would not get any interference, but if he arrives in the base after those people get back to work, he is going to have a minimum amount of delay in order to get things cleared up to get in there. But that could have been avoided providing the railroad would have had their crew here at the proper time.

Q. So as a practice, is there normally any substantial amount of delay in that?

A. No, sir, I would say it was at a minimum.

Mr. KREBILL: That is all.

Q. In other words, 24 hours a day?

A. We are covered 24 hours a day.

Q. Do the delivering carriers ever leave cars when no instructions have been given as to where they are to be left?

A. Well, yes, he would. If a man came in here with a train, as frequently they do, he would find room out there and put the cars, if he wasn't otherwise instructed to do so.

Exam. DIAMONDSON: Let's take the Virginian, Mr. Jones. If he had no instructions whatever, he would just simply drop the cars in the Uptown Yard.

The WITNESS: Yes, sir.

183 Exam. DIAMONDSON: And the Norfolk Belt would drop the cars in this Pier 1 yard?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: On any clear track?

The WITNESS: That is right.

By Mr. KREBILL:

Q. Now, what is the practice of the delivering carriers with respect to the spotting or placing of cars for unloading?

A. Well, they place them on a written order given by the Yardmaster.

Q. From whom do you receive instructions for the spotting of cars?

A. I receive it from the Car Desk, Car Clerk, from Headquarters, PTD.

Q. By PTD you mean the Port Transportation Division?

A. Yes, sir.

Q. Do you ever receive such instructions from the Pier Officer?

A. Yes, at off-hours after the main office is closed the Pier Officer does order cars when he needs them, and we in turn pass the information on the following morning to the Car Desk.

Q. Can you explain a little more fully who the Pier Officer is? That is, what are his functions or duties, insofar as you know?

A. The Pier Officer, as far as I know, is in charge of the piers as to unloading, where he wants the freight unloaded, similar to the various ships the freight is assigned to. And also where he
184 wants the cars unloaded, what position on the piers.

Q. Is there any difference in the practice with respect to the spotting of cars regardless of whether they are spotted for unloading at open storage, warehouses, or on the piers?

A. No, sir.

Q. Does the Army operate any locomotives on the base?

A. Yes, sir.

Q. How many?

A. Three.

Exam. DIAMONDSON: How many times a day does the Virginian come into the Uptown Yard?

The WITNESS: Well, yesterday they were here twice. Normally it only takes one time. They make both deliveries at the same time. Yesterday they necessitated in having to make two deliveries.

Exam. DIAMONDSON: How about the Norfolk Belt?

211 The WITNESS: The Norfolk Belt, they, as a rule, make two deliveries. Now if he had a train in at an odd time, he probably would want to run that train on in. There would be no objection to that, but normally he makes two deliveries a day.

Exam. DIAMONDSON: And unless he receives specific instructions, the Norfolk Belt, he will just simply put the cars in on a clear track in the Pier 1 Yard?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: And the Virginian will put them in in the Uptown Yard?

The WITNESS: Yes, sir.

RECROSS EXAMINATION.

By Mr. COUSINS:

Q. Mr. Jones, you said a minute ago, when the railroads were delivering cars at the piers, that if they had them there at the proper time there wouldn't be any delay?

A. That is right, sir.

Q. The proper time is the time you tell them to put them there, isn't that right?

A. That is right, yes.

Q. Now you didn't mean to say that you have no supervision at all over the movement of commercial cars on the base, did you?

A. Well, I have no supervision over—as to when or where they are to place them, no.

Q. Right. That is, you have no concern with commercial freight?

A. No.

212 Q. It is none of your business?

A. No.

Q. But you have got some concern over every foot of track that is on this base, haven't you?

A. Well, I should say so, yes.

Q. And you are not going to let a railroad locomotive bring commercial freight in here in any way that interferes with the operation of the base, are you?

A. I have never known it to happen.

Q. That is because the crews that are operating here, and you, have an understanding as to how the base is operated, isn't it?

Q. Under whose supervision are those locomotives operated?

A. The Yardmaster.

Q. What are they used for?

A. Well, the Army locomotive is used mostly for spotting the Army equipment, that is, the cars that are reloaded on Army equipment. Also, for cars, we may have a car order for one track, and there is not enough room to complete the unloading there, we have to move it to another spot. We use the Army engine for such movements as those, and also we use the Army engine for spotting cars to piers at times when the railroad is busy working other piers and it is not available at that particular time. In other words, I use him generally to help out in any way he can help out. But mostly for spotting our Army equipment, and our second placement, as we call it.

Q. Do you use those locomotives in connection with as-
185 sembling empties?

A. Yes, sir. We assemble the empties for the delivering carrier, that is, we assemble those empties and deliver them to the Belt Line delivery track. Also we have a track out here we designate. At the present time we use warehouses 2 and 3, middle track, for assembling the Virginian empties. That speeds up the railroad in taking their empties back. Also, it gives us an opportunity to assemble these empties and get the proper release records that we have to have. If we have to pick up at random here and there, we might miss some of the records we should have.

Exam. DIAMONDSON: Are those empties assembled on assigned tracks?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: They are not used for any other purpose than for outboard empties?

The WITNESS: That is right, sir.

Exam. DIAMONDSON: Where are those assigned tracks exactly for each carrier?

The WITNESS: The assigned track for the Belt Line is the track we call the new track, which is the outside track next to the Navy over here, extending from—well, you might say it runs right out from the Standard Oil direction, from the North Gate up to the upper end of Pier 1 Yard.

Exam. DIAMONDSON: How about the Virginian?

186. The WITNESS: The Virginian at the present time I use warehouse 2 and 3 middle track.

Exam. DIAMONDSON: What do you mean by middle track, the center track in that yard?

The WITNESS: No, you have three tracks. You have one that serves warehouse 2, one that serves warehouse 3. You have a

A. Well, yes, that is more or less true. We do have a mutual understanding as to how we are operating, yes.

Q. If they didn't operate in a proper manner, why then you would exert your authority, wouldn't you?

A. Well, if I thought they were deliberately interfering, or something of that kind, I think it would be my duty to.

Q. Certainly, and so long as they don't interfere with you, you pay no attention to them?

A. That is true.

Mr. COUSINS: All right. Thank you.

Exam. DIAMONDSON: There are no particular tracks set aside for commercial freight, are there, in the Pier 1 Yard?

The WITNESS: No, sir, because it is such a small amount 213 there is no justification for having one.

Exam. DIAMONDSON: Are there any further questions?

Mr. FISHWICK: I would like to ask one.

RE-CROSS EXAMINATION.

By Mr. FISHWICK:

Q. Are there occasions, when in order to place a car at the final unloading point, the railroads have to move Army equipment in order to make that placement?

A. You are speaking of in order to place a commercial car, they would have to move?

Q. No, an Army car. For instance, if you had—are there occasions when you have a flatcar down at the piers?

A. Yes.

Q. In order to make placement of an Army car at the piers, the railroad crews have to come in and move your freight?

A. I do not send the rail carriers to work on mixed shipments that is taking Army freight on Army cars. They do not handle Army equipment.

Q. I don't mean handle it—

Exam. DIAMONDSON: You don't require the railroad engines to move any of the Army flats?

The WITNESS: No, sir.

By Mr. FISHWICK:

Q. That means if you had an Army flat down on the pier to be loaded into a ship, that you would consider that track as sort of being prohibited to the railroad crews, and would shift any other cars that had to be moved into that track with your own 214 engine?

A. No, we work these cars in this manner: If the ship is

working Army freight, and he is working other railroad freight, now we have two tracks on those aprons. We will work the Army cars on one of the tracks, and the delivering carrier's cars on the opposite track.

Q. I am not sure I understand you. What do you mean by Army freight? Isn't it all Army freight?

A. I said cars handling railroad cars. I am saying the Army flatcars—you were speaking of Army flatcars?

Q. Yes.

A. All right, the Army flatcars are put on one track. The delivering carriers—that is, such as the Virginian or Belt Line—had cars for the same ship, they would be put on the opposite track. There are two tracks to each berth on the pier.

Mr. FISHWICK: All right.

Exam. DIAMONDSON: They can load the ship from both tracks?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: I mean simultaneously?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: Are there any further questions?

Mr. KREBILL: Yes.

FURTHER REDIRECT EXAMINATION.

By Mr. KREBILL:

Q. Mr. Jones, when you were Yardmaster for Stevenson
215 & Young, were any delays ever encountered in moving cars down to the piers for unloading?

A. Well, do you mean no delays at no time in delivering cars?

Q. I mean was the situation much different then than it is now?

A. No, there is no difference. We may have a great volume of business.

Q. And by reason of the greater volume, there might be greater congestion at times?

A. Yes, sir.

Q. But there were some delays at that time, too, weren't there?

A. Well, we are going to have a minimum amount of delays at all times.

Mr. KREBILL:

FURTHER RECROSS EXAMINATION.

By Mr. COUSINS:

Q. You are handling about ten times as many cars now as you handled when you were working for Stevenson & Young, aren't you?

A. Well, I don't know exactly what the proportion would be, but there is a greater volume of freight handled now than there was at that time, yes.

Q. Very much greater, isn't it?

A. Yes, sir.

Mr. FISHWICK: When Stevenson & Young was operating, they did not operate their own crews, did they? The railroads placed the cars.

216 The WITNESS: They operated one, not continuously, no.

As I say, they have an engine here, and we did at times use it, but we did not use it regularly every day, no.

Mr. FISHWICK: You used it under unusual circumstances when you had a good deal of interplant switching?

The WITNESS: That is true.

Mr. FISHWICK: That is all.

Exam. DIAMONDSON: You are excused, Mr. Jones.

The Witness: Thank you.

(Witness excused.)

217. ROY W. FARRELL was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. KREBILL:

Q. Will you please state your name and address?

A. Roy W. Farrell, 121 Mt. Vernon Avenue, Portsmouth, Virginia.

Q. By whom are you employed?

A. Norfolk Terminals, Division of Stevenson & Young, Inc.

Q. What is your position?

A. General Manager.

Q. Will you state your experience in the field of transportation and port operations?

A. March 1920, April, 1943, Norfolk Warehouse Corporation, Superintendent, subsequently manager; April 1943 to January 1947, Army Transportation Corps, Captain, subsequently Major; from January 1947 to May, 1947, Manager of Hampton Roads Terminals, and from May 1947 to the present, General Manager of Stevenson & Young, Inc.

All of the above service was performed part or all time at the present Army Base.

Q. Does Stevenson & Young, Inc., perform a terminal operation under a contract with the United States Maritime Administration?

A. Yes.

Mr. KREBILL: I ask a document, which has just been distributed, be marked for identification, entitled "Contract MA 392."

218 Exam. DIAMONDSON: That will be identified as Exhibit No. 7.

(Complainant's Exhibit No. 7, Witness Farrell, was marked for identification.)

By Mr. KREBILL:

Q. Mr. Farrell, I have handed you the document which is designated "Contract MA-392," and has been marked as Exhibit No. 7, and ask you what it is.

A. It is an agreement between the Maritime Administration, Department of Commerce, and Stevenson and Young, Inc., under which Stevenson and Young, Inc., agreed to perform all the duties and functions of a public commercial marine terminal operator at the Army Base, Norfolk, Virginia.

Q. Does Stevenson and Young, Inc. sub-lease portions of the Army Base property to others?

A. Yes.

Q. Does Stevenson & Young, Inc. perform any handling service in connection with military freight at the Maritime Administration Terminal at Norfolk?

A. Yes.

Q. For whom and under what arrangements are such services performed?

A. The Army orders cars placed and orders my company to perform the unloading.

Q. By whom is Stevenson & Young, Inc., paid for such services, sir?

219 A. The Army Finance Officer.

Q. Does Stevenson & Young, Inc., use any government owned machinery or freight-handling gear or equipment in its operations?

A. Yes.

Q. Will you briefly describe such equipment, and explain the circumstances under which it is used?

A. We use Army trucks and flatbeds for transferring cargo from one location to another, Army cranes for unloading into open storage.

This equipment is furnished by the Army under contract.

In addition, we sometimes use Army equipment to supplement our smaller equipment, in which case the Army invoices us for the use thereof.

Q. Does Stevenson & Young, Inc., perform any services at this port for the Railroads?

A. Yes.

Q. Will you describe those services and state by whom and in what manner payment is made?

A. Commercial cargo arrives and is ordered unloaded or loaded by the owners. Terminal (Stevenson & Young) then invoices rail carrier for wharfage and handling.

Q. Does Stevenson & Young, Inc., receive any payment from the railroads for the loading and unloading of cars of military freight?

220 A. No.

Q. Has your company made any effort to collect wharfage and handling allowances from the railroads in connection with the so-called military traffic?

A. Yes.

Mr. KREBILL: I ask that a letter dated April 10, 1951, addressed to the transportation officer, northeast project, 61 Broadway, New York, New York, be marked for identification.

Exam. DIAMONDSON: That will be marked Exhibit No. 8 for identification.

(Complainant's Exhibit No. 8, Witness Farrell, was marked for identification.)

By Mr. KREBILL:

Q. Mr. Farrell, I have shown you a copy of a letter dated April 10, 1951, which has been marked Exhibit No. 8, and ask what its purpose was?

A. We hoped at that time to use the data requested in that letter for billing the railroads for wharfage and handling services.

Q. Was your company successful in obtaining these allowances from the railroads?

A. No.

Q. What difference, if any, is there in the handling of cars at the Army Base in the movement of commercial traffic?

A. Placement of cars is ordered by my company on commercial traffic. Placement of cars is ordered by Army on military traffic.

221 Q. Are you familiar with the manner in which export and import freight has been handled at the Maritime Administration Terminal piers both before and since 1 May 1951, the date on which the Army began the port operation?

A. Yes.

Q. Is there any difference in the placing of cars, as called for by the terminal operator, since the Army took possession of the piers from the way this work was performed before Army possession?

A. The Army yardmaster now orders car placements to be per-

formed by the railroads, or places cars of military traffic with Army power. On Army traffic my company is a labor contractor instead of a Terminal Operator. Before the Army activation of the Hampton Roads Port of Embarkation, my company ordered the railroad car placements or placed the cars with its own power on both military and commercial traffic.

Q. Are you familiar with all piers in the Norfolk area over which export and import freight can be handled?

A. Yes.

Q. How did you acquire such knowledge?

A. Friendly cooperation with other operators; observation; and through actual service on these piers as an Army operations officer.

Q. Will you name or identify each of these piers, and state
222 the capacity of each for handling export and import freight?

A. Lambert's Point Docks, Lambert's Point, three piers, capacity, 12 ships.

Lambert's Point Docks, Sewell's Point Division, two piers, capacity, six ships.

Army Base Piers, two piers, capacity, ten ships.

Imperial Docks in Berkley, two piers, capacity, two ships.

Q. What is the practice of the railroads as to unloading and loading of cars or making allowance therefor, including wharfage, on export and import freight at each of those piers?

A. Uniform Practice on commercial cargo; cars are unloaded or loaded on owner of cargo request. Rail carrier is billed for wharfage and handling.

Q. Will you state whether those wharves are public or private?

A. Wharves under railroad contract are public terminals.

Q. What kind of freight is ordinarily handled over private piers?

A. Owner of pier usually owns the cargo or is interested in it. The cargo is mostly raw materials imported for processing, manufacture or distribution, and often is shipped in bulk at rates which do not include a handling charge or allowance, such as coal, lumber, chemicals.

Q. How does such traffic compare with the military freight handled over the Army Base Piers?

A. Military traffic is generally dissimilar to the freight handled
223 over the private piers; the military traffic is comparable with the commercial traffic which we handle at the Army base piers.

Q. Have you observed any difference in the operation of the Army base piers by the government in the handling of military freight, from the ordinary operations of a private pier, Mr. Farrell?

A. Yes.

Q. Will you state what those differences are?

A. Private piers are set up usually as an adjunct to a large manufacturer or merchant and as a part of his enterprise.

By use of this adjunct he has his material loaded to or unloaded from his plant. Small merchants or non resident dealers use public terminals.

There is no similarity between the Army embarkation port practice and the operation of a private pier.

Q. When commercial cars arrive at the Army base through Quartermaster junction—when I refer to "commercial cars," I mean cars loaded with commercial freight which your company handles—do those cars move directly to the pier for unloading without stopping?

A. I can't conceive of why any but a negligible amount should, because when the cars come in, commercially, we are not ready to unload them. There could be a case where we were waiting for a "hot" car to make up a shipment, something urgent for a ship, you know, and we hear the railroad has it, and we would
224 tell the railroad to push that car right straight down to post number so and so. That is not frequent.

Q. What would be the ordinary manner in which a car would be handled when it arrives on the base, a car of commercial traffic?

A. Well, it would normally be put in the holding yard, at either one of the piers.

Q. Do you ever unload the cars at the warehouses?

A. Oh, yes.

Q. At the warehouses, I mean other than the pier warehouses; is that right?

A. That is right.

Q. When is that freight moved down to the pier?

A. The cars arrive in the holding yard, the uptown yard, or the pier yards, and if there is a great run of warehouse freight, for instance, like in the tobacco season, as the warehouse tracks become available, supplemental cars are ordered in.

Q. I don't believe that was quite what I had in mind. What I had in mind was the freight which you had unloaded into warehouse storage space off the piers. How is that handled down to the pier?

A. Let me have that question again.

Q. Maybe I misunderstood you in response to an earlier question.

I asked before, is any of the commercial traffic which arrives at the base unloaded into warehouses?
225

A. Not now, no.

Q. Has there been any?

A. When we had warehouses, there was. We don't have warehouses now, except very few.

Q. You do have some?

A. Yes; but not enough to engage in any commercial operation for warehousing.

Q. Have you ever stored any, or held any export shipment, in warehouses off the pier since the first of May, 1951?

A. No.

Exam. DIAMONDSON: What happens if the ship isn't available at the time the commercial traffic arrives?

The WITNESS: The freight goes into the ship's berth. It waits for the arrival of the ship.

Exam. DIAMONDSON: Do you take it down to the pier warehouse, you mean?

The WITNESS: That is right.

Exam. DIAMONDSON: Do you charge storage for it?

The WITNESS: Oh, yes.

Exam. DIAMONDSON: In addition to wharfage and handling; is that right?

The WITNESS: Yes. Outside of free time.

By Mr. KREBILL:

Q. Did I understand you to say that before May 1, 1951, you did unload some cars into warehouse storage for holding?

226 A. That is right.

Q. Did you receive any allowance or payment from the railroads on those shipments when they were exported?

A. Yes.

Q. When did you receive that allowance?

A. At such time as the goods were exported, and we could give the ship's reference.

Q. In other words, you did not receive it until it was actually moved down onto the pier?

A. It had to be exported. The bill of lading had to be signed, sir.

Exam. DIAMONDSON: Does your company actually stevedore the commercial shipments? Are they under contract with you, and subcontract with you?

The WITNESS: The stevedores are under contract commercially with the steamship lines.

Exam. DIAMONDSON: You don't pay them for the actual stevedoring?

The WITNESS: We don't have anything to do with the stevedoring.

By Mr. KREBILL:

Q. When those shipments were moved from the warehouse to the piers, how was that accomplished?

A. Usually, the bulk of it, had a transit privilege, whereby the

227 railroad was obligated to pick it up at the warehouse and transfer it to the pier.

Q. Was any of it ever trucked to the pier?

A. What didn't have an in-transit privilege had to be moved by truck or trailer.

Q. Did you receive any allowance for wharfage and handling on the traffic that was trucked to the pier?

A. From the warehouse?

Q. From the warehouse?

A. Yes.

Exam. DIAMONDSON: Is there any commercial traffic unloaded at open storage?

The WITNESS: Some little.

Exam. DIAMONDSON: Do you get the allowance from the railroads on that traffic when it is taken to the pier?

The WITNESS: Oh, yes.

Exam. DIAMONDSON: Handled over the pier?

The WITNESS: Yes.

Exam. DIAMONDSON: What portion would be opened in open storage, of the commercial traffic you handled?

The WITNESS: Inbound freight for export is so negligible, in that category, that I wouldn't have any idea what the figure would be.

Exam. DIAMONDSON: How about imported stuff—import traffic?

The WITNESS: There are some things coming in—do you mean for open storage?

228 Exam. DIAMONDSON: Open storage only.

The WITNESS: The only thing imported here that goes to open storage in any quantity at all would be something like some bulk cargo, like asphalt, or something of that sort.

Exam. DIAMONDSON: Is that negligible quantity you spoke of of export stuff, that is actually placed in open storage—how do you get it from open storage to the ship? Is it loaded on railroad cars, or trucked over?

The WITNESS: Are you still talking about bulk?

Exam. DIAMONDSON: Yes.

The WITNESS: We have never had any bulk cargo going from open storage to a ship.

Exam. DIAMONDSON: How about package cargo?

The WITNESS: Package cargo would go by wheeled vehicle, we will call it—mobile equipment.

Exam. DIAMONDSON: You say the percentage of that traffic is negligible?

The WITNESS: Well, from the warehouses, it isn't—

Exam. DIAMONDSON: I said from open storage.

The WITNESS: From open storage it is negligible.

Exam. DIAMONDSON: Do you actually put in open storage package traffic?

The WITNESS: No.

Exam. DIAMONDSON: Only bulk traffic?

229 The WITNESS: Bulk.

Exam. DIAMONDSON: It is a negligible amount of bulk traffic?

The WITNESS: Or else heavy, cumbersome machinery.

Exam. DIAMONDSON: Do you have any further question, Mr. Krebill?

Mr. KREBILL: Yes.

By Mr. KREBILL:

Q. Mr. Farrell, if your company were handling all of the traffic which is moving through the port now, including the military traffic, would you store it in a similar manner as it is being done now?

A. I rather think so.

Q. Or hold it in a similar manner?

A. I rather think so.

Q. And would you get the allowance on that?

A. There is a question in my mind, that when you put cargo, destined overseas, into storage, and process it or break it up in such a way that you lose its original identity, I don't see how we could reclaim wharfage and handling.

I wouldn't know how to bid it.

Q. How would that differ from the traffic which moved into the warehouses which you mentioned a while ago, and then was later trucked to the piers, on which you said that you had received the allowance?

230 A. Because the traffic I spoke of at that time came in a car which was identified by a railroad number, on a railroad pro number, that identity stuck to that car until such time as it went down to the pier.

That identity went aboardship as that identity.

Q. Do you know whether or not the Army traffic loses its identity in all instances?

A. Only in some instances.

Q. What are those?

A. As in the case of where things are processed. This NAC cargo, for instance, comes in here; carload after carload is handled. It is unloaded by carpenters, the panels are put into crates, the crates go up on a hill, and God knows what care they came out of.

Q. Is that type of cargo ordinarily received in open-top cars?

A. No; box cars.

Exam. DIAMONDSON: Do you do any crating of commercial traffic?

The WITNESS: No.

Exam. DIAMONDSON: No processing?

The WITNESS: No processing.

Mr. KREBILL: That is all.

Exam. DIAMONDSON: You may cross examine.

Mr. COUSINS: Would this be a good time for a little breather?

Exam. DIAMONDSON: All right; we will take a short recess.

231 (Recess taken)

Exam. DIAMONDSON: Come to order, gentlemen.

Mr. KREBILL: I would like to ask a few more questions on direct, if I may.

Exam. DIAMONDSON: All right.

By Mr. KREBILL:

Q. Mr. Farrell, do you maintain any record or perform any record service for the Army?

A. We make a record.

Q. You make the record of the traffic, the military traffic, which is handled through the port?

A. In other words, as I say, we process the Army shipping documents and distribute them to the proper people in the Army, and keep a copy of that document.

Q. And when Army Freight, which has been held either in closed storage or open storage, moves down to the piers, can that be identified by inbound billings?

A. Yes.

Q. In what manner?

A. Well, your car comes in with an Army shipping document—anywhere from 15 to 19 copies. It has the data on these, like a bill of lading. It has the car number, contents, weight, cubic, and what-not.

You have enough copies of it that everybody has one, some
232 people don't want them. Anyhow, when it comes time to move that thing down to the pier, this document goes along with it. This represents what came in, or represents what goes out.

Q. You are referring to shipments moving down to the pier which have been held off the cars?

A. Yes.

Mr. KREBILL: That is all.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION.

By Mr. COUSINS:

Q. Why do you have to have 15 or 19 copies of these shipping documents?

A. Ask the Army; I don't know. I don't have to have them.

Q. Who makes them?

A. The Army.

Q. Sir?

A. The Army.

Q. Do you make any copies of these billings?

A. No.

Q. Do you keep track of that for the Army?

A. I simply fill them out and show the stuff has been received. That is the Army's record.

Q. What kind of records do you make when you check this freight out of the cars?

A. I check that document, I check its correctness.

Q. Now, Mr. Farrell, you have been in this terminal operation for a long time; haven't you?

A. I'm afraid so.

Q. You are pretty well familiar with what I might call the "port practices of the railroads," aren't you?

A. I think so.

Q. And prior to last May 1, when the Army took over this base, your company, Stevenson & Young, was operating the Army base as a public terminal; was it not?

A. Yes.

Q. And in that connection you had an arrangement with the Norfolk railroads under which you acted as their agent in handling freight on the terminal; did you not, Mr. Farrell?

A. I was an independent contractor.

Q. All right.

In connection with the railroads?

A. That is right.

Q. And you had a contract with the railroads indicating what you could do?

A. That is right.

Q. And one of the things provided by the contract was that you would unload—I'm only going to talk about export freight for simplicity.

A. All right.

Q. —that you would unload export freight from cars to the extent that the railroads obliged themselves in their tariffs to perform that unloading?

A. That is right.

Q. Right?

A. Right.

Q. And the railroads arranged, provided in their contracts, that they would pay you a certain compensation for doing that; is that right?

A. That is right.

Q. And the last rate of compensation that you received was 80 cents a ton?

A. That is right—no; do you mean wharfage and handling, or just the handling?

Q. I'm talking about unloading—unloading.

A. Three and three-quarters cents a hundred.

Q. Yes; you are right. That us 75 cents a ton. I should have said 75 cents a ton. And you also received from the railroads another cent and a quarter per ton, which was called wharfage?

A. That is right.

Exam. DIAMONDSON: Is that one cent and one quarter a ton, or 100 pounds?

The WITNESS: 100 pounds.

By Mr. COUSINS:

Q. Yes; one cent and one quarter a hundred pounds.

A. -Yes.

235 Q. Or 25 cents per ton?

A. That is right. That is limited to CFA railroads.

Q. You mean it is limited to traffic that originated in a certain territory?

A. That is right.

Q. Yes. You never had any dealings with any CFA railroads; did you?

A. I don't know as I did. That applies to CFA traffic.

Q. The only point I want to make for clarity is that the railroads for whom you acted as agent were these local lines at Norfolk; not for any others?

A. That is right.

Q. Beyond here?

A. That is right.

Q. Didn't your contract provide that you would not receive that compensation with respect to any freight that was consigned to your company?

A. Oh, yes; that is right.

Q. Do you know whether or not that provision was consistent with the practices of the railroads at other piers, not to unload freight or pay wharfage, make wharfage payments on freight handled over a shipper's own pier?

A. Perfectly well; yes.

Q. That is the practice?

A. That is right.

236 Q. As a public terminal operator with many years of experience, don't you agree that is a correct practice, Mr. Farrell?

A. I agree.

Q. You don't think the railroads should extend their practice to private piers where shippers handle their own freight; do you?

A. Well, that is a matter of policy. I think the Interstate Commerce Commission has decided that as a matter of policy. It isn't up to me to say whether it is correct or not. I feel it is correct, but I am not an authority on it. It has been in effect so long, I feel like it is right.

Exam. DIAMONDSON: It is the usual practice; isn't it, Mr. Witness?

The WITNESS: Yes.

By Mr. COUSINS:

Q. You agree it would be a pretty expensive proposition to the railroads; don't you?

A. I can conceive where if everybody, if all these manufacturers could get paid for unloading their cars, it would be a quite nice thing.

Q. As to that, in your direct testimony you indicated that you thought that these private piers were a little different from public piers.

A. They are.

237 Q. Because they were connected with manufacturers; is that right?

A. That is right.

Q. And that the freight was a little different from the commercial freight handled over public piers?

A. Yes.

Q. All right.

Now, that is not necessarily true, is it? How about lumber handled over piers operated by some of these big lumber companies?

A. If they have their facilities to handle their own commodities, I think that is a private business.

Q. Yes; but there are some big lumber companies that have their own piers; aren't there?

A. I don't know of any. They don't have them here.

Q. Did you ever hear about the Weyerhaeuser pier over at Newark?

A. Yes.

Q. Did you ever hear about the Dutton Lumber Company's pier, sir?

A. Yes.

Q. The shipments that they handle over their own piers aren't any different from commercial freight that moves over public piers; are they?

A. I wouldn't know.

Q. You wouldn't think so; would you?

238 A. I wouldn't think so.

Q. Your contract, or contracts, under which you act as agent for these railroads in handling commercial freight, are still in existence; aren't they?

A. Oh, yes.

Q. You are still operating under them today?

A. Oh, yes.

Q. And to the extent that you handle commercial freight, on the portion of the piers assigned to you by the Maritime Administration, your arrangements with the railroads have continued just as formerly?

A. Absolutely.

Q. You referred to the payment you received as an allowance, Mr. Farrell.

A. Yes.

Q. Do you know the correct definition of an "allowance?"

A. I don't know that I do.

Q. Is there any difference in your mind between a payment that is made by a railroad to a shipper for doing something, and a payment that is made to a railroad agent or contractor for doing something?

A. I can see where there would be a difference.

Q. All right.

Now, if I suggest that an allowance is a payment by a railroad to a shipper out of the rate—that is, a refund, or a
239 rebate—

A. Yes.

Q. —a lawful refund or rebate; you wouldn't say that is the kind of payment that you get from the railroads; would you, sir?

A. Absolutely no.

Q. Yours is compensation; isn't it?

A. It is.

Q. And the railroads paid you 75 cents a ton, and still do, because you were performing a service in their behalf; is that right?

A. That is right.

Q. And in substance, the arrangement was no different from what it would be if you were a railroad employee; was it?

A. The same.

Q. And you got 25 cents a ton for wharfage, because you furnished the railroads a pier?

A. That is right.

Q. Was there any difference whatever in that wharfage arrangement from what it would have been if the railroads just had a rental arrangement with you, and paid you so much a year instead of so much a ton?

A. I think they are very parallel. It could be figured out to come out about the same.

Q. The only reason the per-hundred pound, or per-ton
240 arrangement was used was because it was a convenient means of measuring the service; wasn't it?

A. That is right; yes.

Q. Now, when you handle commercial freight, for which the railroads pay you, does that ever come into the possession of the shipper while it is on this base?

A. You mean the money?

Q. No; the freight?

A. Oh; no. The freight belongs to me, because I am the railroad, then.

Q. And the freight is in your possession at all times; is that right?

A. That is right; the shipper can't even touch it.

Q. And if he did, what would happen with respect to the services that you perform for the railroads?

A. I wouldn't get paid.

Q. Sir?

A. I wouldn't get paid.

Q. Just like you don't even get paid if you have any traffic of your own?

A. That is right.

Q. And when commercial freight came onto the Army base, prior to last May, when it was your exclusive operation, and was unloaded first into warehouses, or was unloaded to ground storage, which you said was a negligible quantity—

241 A. Yes.

Q. In any event, no matter what happened to it, it was at all times in railroad possession, through you as their agent; wasn't it?

A. That is right.

Q. And if the railroads—if the railroads, through you, had to move the freight after it reached this terminal, more than once, that is, from the hold yard to a warehouse, or from a warehouse to a pier, whatever movement there was, was performed as a matter of convenience for you or the railroad, rather than pursuant to any instructions from a shipper; wasn't it?

A. Now, let me get that boiled down this way: The freight came in here. Let's make it consist.

Q. All right?

A. The freight came in here, and was put either in a warehouse or some other place prior to going to the piers; is that right, sir?

Q. Right.

A. It then, at some subsequent time, had to go to the pier. It was my responsibility to get it there to meet that ship. The railroad wasn't concerned about that. The railroad wanted to get that freight on that ship, but the owner paid for moving it from the place of rest in the base to the pier. Is that an analysis of what you wanted to say?

242 Q. But the owner was at no time in possession of that freight?

A. He was at no time permitted to even put his hands on it.

Q. Right.

Exam. DIAMONDSON: You had full control over that traffic as agent for the railroad to the time it was put on the ship; did you not?

The WITNESS: Correct.

By Mr. COUSINS:

Q. Now, you introduced a letter as Exhibit 8. I think you said that you did not actually get compensation from the railroads for unloading this traffic?

A. That is correct.

Q. Why not?

A. It was considered military cargo, and being military cargo, it belonged to the owner, and they wouldn't pay it.

Q. When was it loaded to vessels?

A. I'm not clear on that, as to whether it was loaded to vessels—I believe it was loaded to vessels prior to May first, but I wouldn't swear to that.

Q. Do your contracts have some provision in them with respect to military freight?

A. Our contracts with the railroads? No.

Q. Of course, if it was loaded to vessels after May first—

A. It is purely military.

Q. There should have been no compensation?

243 A. That is right. But my idea of this letter was—you notice it is April. It was my idea I was handling this particular cargo on a commercial basis; and if I could get the railroad to pay for it on a commercial basis, it would save me having to bill the Army or the North Atlantic Constructor.

Q. While you were in full possession of the base as a commercial operator, if the government shipped export freight through your

terminal, your arrangement with the railroads applied to that like anything else; didn't it?

A. Sure.

Q. There was no exclusion of government freight when it was shipped in the same method as commercial freight?

A. Sure. I billed the Secretary of the Army for the services and got paid.

Exam. DIAMONDSON: Did you have the same control over that traffic as you had over commercial freight?

The WITNESS: Absolutely. There was no Army here.

By Mr. COUSINS:

Q. Now, Mr. Farrell, can you tell me in a brief way what you do for the Army, under your contract that you have introduced in evidence as Exhibit 7?

A. I don't do anything for the Army under this contract. This is the commercial contract.

Q. So it is. All right. You did not introduce it, but Exhibit 4 is a stevedore—

A. You want the terminal operations contract?

244 Q. Yes, called stevedore checking and clerking service contract.

A. I don't think you want that one. That has no bearing on railroads.

Q. That is right. I want Exhibit 5, which is headed "Car, Truck, and Barge loading and unloading and terminal operations service."

A. That is right.

Q. That is it; is it?

A. That is right.

Q. Just tell us briefly, what do you do under that contract?

A. We unload freight. Briefly, we unload freight, and make it available for ships to carry overseas. That has many ramifications. It isn't as simple as that. I can't sit here and explain to you exactly what we do. It is something that had better be developed by questioning.

Mr. KREBILL: Mr. Examiner, I don't think this witness can be asked to interpret the contract. The contract speaks for itself.

Exam. DIAMONDSON: He can be asked what Stevenson & Young does for the Army:

The WITNESS: We unload Army freight, and make it available for vessels to carry overseas.

By Mr. COUSINS:

Q. Now, describe briefly some of the ramifications.

245 A. Well, let me go at this like this: I don't want to tell you a story, but I will try to make a comparison. If the Army had a cargo, a solid cargo of freight coming through here, to go to destination, we would know there was 175 carloads of something coming for a particular ship. We would round up those cars, and unload them on a certain berth where the ship would be loaded. That is the job at its lowest terms.

The Army has 1200 or 1500 cars of freight coming in here a month, maybe more, going to a lot of different destinations all over the world, under various force marks. It is the property of the individual departments of the Army. It is complicated. And we have to handle it in a complicated manner. We have to keep it straight. We have to keep an inventory for the Army so they will know what they have, what is available for shipment. It isn't just a matter of unloading the cars. There is a vast amount of clerical work, superintendence, administration, to keep this complexity of things into some reasonable form of digest.

Q. What is there about the work that you do for the Army that you could not do if the base had remained in your hands as a public terminal operator?

A. Would you repeat that?

Exam. DIAMONDSON: Would you read it, Mr. Reporter?

(Question read)

246 The WITNESS: Had this base remained in our hands as a public terminal operator, we would have to receive from some administrative source in the Army detailed instructions covering the handling of each carload of freight that came in here, in the same manner we get that information from a normal freight broker, considering the vast amount of tonnage involved, it would take an army of freight brokers to give us that information.

Does that answer your question?

By Mr. COUSINS:

Q. That is just a question of volume; isn't it?

A. It is not so much a question of volume as it is a question of destinations and force.

Q. And paper work?

A. That, of course, is the main difference; is the paper work; that is right.

Q. Different from the manner in which commercial freight is handled?

A. Commercial handling, on a carload of freight, commercially,

there is one piece of paper, about as big as this. This is our checker's tally sheet. That is the complete record of the car.

Q. All right. Now, on Army freight?

A. On Army freight there would be from 12 to 19 copies of their document, besides this sheet of ours—plus the correlation
247 of all these together to make up the lots.

Q. Is 19 documents the maximum number used on this base?

A. I think that is the top, so far as I know.

Q. How about the processing of freight?

A. The Army processes the freight themselves. I don't process it.

Q. Could you have done that if you were operating the terminal, sir?

A. In a matter of overseas vehicles, and things of that sort, no. We as terminal operators process nothing.

Q. In your opinion, was there any necessity for the Army taking over this base in order to ship the material through that is now moving?

A. I don't see how it could have been done otherwise.

Q. Why not? Why can't they ship it just like any commercial shipper ships it?

A. Having been in the Army myself, I have some idea of their problem. It is a vast problem of coordination of supplies to forces all over the world. There has to be a head to it some place. No head some place is not sufficient to do this job. You must have delegated heads, at other places of authority, to carry out the machinery. In order for Stevenson & Young, as a terminal operator, to do the Army's work, we would have quite an army here
248 telling us what to do, and how to do it.

Q. Now, we were told yesterday that the basic distribution of this Army freight was made back at the inland depots, that when the freight was shipped out of the depots the Army knew where it was going. It was on its way then to a particular place, for a particular purpose.

If that decision is made inland someplace, where the freight originates, why can't it move through a port terminal just like any commercial freight?

A. Theoretically it can, but I think it is too complicated a job to funnel that freight through one spot without the Army being there with their hand on the funnel.

Q. Now, if the railroads should undertake the obligation of unloading the Army freight on this base, just as they did when this was your public terminal, will you perform for the railroads under contracts with them, at 75 cents a ton, the service that you now perform for the Army?

A. I wouldn't want to.

Q. Why not?

A. I wouldn't be paid enough.

Q. Then it must be that you do something for the Army over and above what you do for the railroads when you act as their agent.

A. I do. When I operate this terminal, I'm the boss. I tell everybody what to do, even the customers. When I operate
249 it for the Army, I'm the chief man in the labor battalion. The Army tells me what to do and how to do it, which includes the general upkeep of the police work, cleanliness, according to military standards.

Q. Do you think the Army operates the base as efficiently as you did?

A. I wouldn't like to bring that question up.

Q. All right. Mr. Farrell, tell me how does the volume of freight moving over the base today compare with what it did during your control as a public operator?

A. I would say about five times as much.

Q. Wouldn't it be closer to ten times as much?

A. It depends on how you measure it. In the Army, I always measured everything by measured tons. In commercial work, I talk about the other kind of a ton.

Q. I didn't get that?

A. I talk about the weight ton.

Exam. DIAMONDSON: How about cars?

How about volume in number of cars?

The WITNESS: Well, my months in the commercial work vary, business is seasonal. I have one hundred cars a day in here, commercially, many many a day, day after day, in the tobacco season. I am getting about one hundred cars a day for the Army. It depends on what time you are talking about.

By Mr. COUSINS:

Q. When you spoke of measured tons, what is the difference
250 between a measured ton and a weight ton?

A. A weight ton weighs either one of two things, either 2,000 pounds, or 2240, whichever one you choose to call it. Right now the Army says it is 2240. The measured ton is 40 cubic feet, you don't change that.

Q. Is there some rule of thumb which says the ratio is about one to three?

A. No.

Q. You cannot compare it?

A. No. It depends on whether it is lead, or feathers. It is somewhere between there.

Q. You mean which is heavier per ton?

A. Yes.

Q. When a witness told us yesterday—when a witness told us yesterday that the Army was moving from 60 to 70 measured tons a month—

A. Doing what?

Q. Sixty thousand to 70 thousand measured tons per month.

A. Oh, yes. That is about right.

Q. How many weight tons is that?

A. I don't know.

Q. Neither do I.

A. I use the big one, I use the big figure. I get paid more for using the big figure. I don't care about the other one.

251 Q. Let's take the last six months. What would be your impression if I should say there is about 2,000 cars a month moving in here?

A. I would say you were wrong.

Q. What would you say?

A. The highest number of cars I have had so far is 165.

Q. You are not including our Navy freight, are you?

A. No, I am not.

Q. Isn't it true that prior to last May when you were operating the terminal, you were handling about 200 cars of commercial freight a month?

A. In some months, yes.

Q. Wasn't it running that way for quite some months prior to last May 1?

A. Yes, it ran that way for six or seven months prior to May. The tobacco season was over then, you see.

Q. When you were operating this as a private terminal, I assume you were in competition with the other public facilities here that you mentioned?

A. Oh, yes.

Q. Have you any ideas as to what share of the business your company got on the Army Base, in competition with these other public terminals?

A. Do you mean prior to May 1?

Q. Yes.

252 A. No, I have often looked at the port figures and looked at my figures, and wondered where all the freight went. I know my competitor didn't get it, because he is doing the same thing.

Q. You mean you didn't get as much as you thought you should?

A. Neither one of us got as much as we thought we should have, according to the port figures.

Q. Now, in normal times, by which I mean times when the Army

isn't funnelling its traffic through Norfolk, aren't the public facilities, the public pier facilities here entirely adequate to take care of all the commercial traffic?

A. They are adequate right now.

Q. They are more than adequate for the commercial traffic that moves through Norfolk, aren't they?

A. If you ride down the river and look at the piers, you would think they are.

Exam. DIAMONDSON: Could you handle more commercial traffic than you are at the present time?

The WITNESS: I wouldn't want to undertake it, it would interfere.

Exam. DIAMONDSON: On account of handling the Army traffic?

The WITNESS: It would interfere with my military traffic.

Exam. DIAMONDSON: Do you have to use any Army equipment for the loading of commercial shipments?

The WITNESS: No.

Exam. DIAMONDSON: Cranes, for example?

The WITNESS: We might use a gantry crane. We pay
253 the Army for the rental of the cranes.

By Mr. COUSIN:

Q. Prior to last May 1, when you were handling only commercial freight on this facility, in your opinion could not the other public piers here have also handled that freight, that is, what you were handling?

A. No. We got crowded every now and then. Sometimes we would have more freight. Somebody was going to have a berth, we called up our competitors and say "How about it, will you take this ship?" That has happened.

Q. Under average conditions, though, you had more facilities in the port than were used, didn't you?

A. We have to have, to perform the service.

Q. All of you would have been glad to have more traffic?

A. Yes.

Q. Did I ask you what share of the commercial traffic that moved through this port you normally received prior to last May 1?

A. I wouldn't know. I don't know how much moved through the port.

Q. You have no idea whether you got just about as much as the Lambert docks—or half as much?

A. I rather think they had the edge on me. They had more than I got. He perhaps would tell you I got more than he did. I don't know. But I always felt he had more business than I did.

Q. How about the docks down at Sewell's Point, or is that what I have been talking.

254 A. That is Lamberts.

Q. What is that other public terminal here? Isn't it operated by Norfolk-Tidewater Terminal, or what is the name of it?

A. That is the name of another outfit here.

Q. They operate the piers owned by the Southern Railway?

A. I think so.

Q. Why don't you mention them in your statement?

A. Well, you've got to stop somewheres down the line. Their traffic is negligible.

Q. Were you in competition with them?

A. If I am, I don't know it.

Q. I would gather from your direct testimony that the Lambert Point docks have more capacity than the Army Base.

A. They have more ship capacity. We have the warehouse capacity; and that is what counts.

Exam. DIAMONDSON: Are commercial shipments placed in warehouse storage because the ship isn't available at the time of the arrival of the traffic?

The WITNESS: Not so much that as import cargo is placed in the warehouses, awaiting a convenient time for the purchaser to use the goods.

By Mr. COUSINS:

Q. That is in-transit, isn't it?

A. Yes.

Exam. DIAMONDSON: When you have an import shipment, what are the mechanics of getting that import shipment onto 255 the railroad cars and out of the base?

The WITNESS: You see a shipment is imported, they have five days' free time after the ship quits work to get the freight loaded. The owners, for a large part, know the ship is coming in, and their orders have come here before the arrival of the ship on a great percentage of the freight. So when a ship comes in, it unloads, we will have a great many cars to load right away. If it is not loaded, we have no orders within the free time, the cargo is then moved to the warehouse, to await the importers' convenience. That is to keep the pier fluid.

By Mr. COUSINS:

Q. To what extent does the Army interfere with your present commercial operations?

A. They don't.

Q. To what extent do the Army locomotives move your commercial freight to warehouses or piers?

A. They don't.

Exam. DIAMONDSON: The question was asked yesterday, whether or not you used the same crews for handling commercial as well as military traffic, interchangeably.

The WITNESS: You mean Stevenson and Young employees?

Exam. DIAMONDSON: Yes.

The WITNESS: They are interchangeable, yes. That is a matter of time-keeping.

By Mr. COUSINS:

256 Q. You are not turning over to the Army any of the compensation you are receiving today from the railroads, are you?

A. Hardly.

Mr. COUSIN: Thank you.

Mr. MEYER: No questions.

CROSS-EXAMINATION.

By Mr. REYNOLDS:

Q. Mr. Farrell, are you familiar with the contract between Stevenson and Young and the railroads with respect to the handling of commercial traffic?

A. Yes.

Q. You are?

A. We have several of them.

Q. I'm talking about the current, the one in effect today.

A. W-at railroad are you talking about?

Q. The railroads serving Norfolk.

A. There is no contract between Stevenson and Young and the railroads serving Norfolk. There is an individual contract with each railroad.

Q. I believe you have a separate contract with each of the railroads, haven't you?

A. Yes.

Q. That is what I am talking about.

A. Yes.

Q. Under those contracts, do you collect the freight charges?

A. No.

Q. You do not?

A. No.

257 Q. You do not?

A. No.

Q. Do the railroads themselves collect the freight charges?

A. I hope so.

Q. Do the railroads preserve the right to examine your books to determine the amount they owe you?

A. That is in the contract.

Q. Under the contract?

A. Yes.

Q. Do you maintain insurance on the cargo, commercial cargo, in order to protect the railroads from fire or other hazards?

A. We insure no cargo.

Q. I am not talking about after it reaches the ships.

A. I insure nobody's goods.

Q. You do not?

A. No.

Q. Do you agree to protect the railroads in case freight is damaged while on the base here, commercial freight?

A. We put up a bond.

Q. You do?

A. Yes.

Q. Does that bond also protect the railroads in case of misdelivery?

A. If anything like that happens, we have to pay for it.

258 Q. Yes. When a commercial shipment comes into the base for export, does the bill of lading state the ship on which the shipment is going to be exported?

A. No. No, it just says for export.

Q. I'm talking about a commercial shipment.

A. Commercial shipment, it says for export.

Q. Does it say when the ship is going to arrive?

A. No.

Q. Or is expected to arrive?

A. No.

Q. When do you get that information?

A. Either from the shipper or his local broker. Some local agent has to book the freight, you see.

Q. I see. Do you get that sometimes before the goods arrive?

A. Frequently, yes.

Q. Frequently.

A. Letter of intention, we call it.

Q. Beg pardon?

A. We get a letter of intention.

Q. If you know the ship on which the shipment is going to be exported, why then you hold it here—hold the shipment here in the base until the ship arrives?

A. That is right.

Q. And you can either hold it in the car or put it in the warehouse, whichever you choose?

A. That is right.

259 Q. And when the ship arrives, you place the shipment on the ship without any further instructions from the shipper?

A. I place the shipment on the pier.

Q. On the pier, that is right.

A. Yes.

Q. Now, if a shipment is stored in a warehouse for more than the free time, you charge the shipper storage, do you not?

A. That is right.

Q. And if it stays in the car more than the free time, you charge him—

A. That is car storage.

Q. I beg your pardon?

A. That is what we call car storage.

Q. Car storage.

Mr. REYNOLDS: I don't believe I have anything further.

Mr. FISHWICK: No questions.

Exam. DIAMONDSON: Do you have any further questions, Mr. Krebill?

Mr. Krebill: I have a few more questions, but in view of the fact it is past 12:00 o'clock, perhaps you want to recess for lunch, do you?

Exam. DIAMONDSON: I think we ought to get through with the witness if we could, and excuse him.

Mr. Krebill: It won't be long.

Exam. DIAMONDSON: All right.

260 REDIRECT EXAMINATION.

By Mr. KREBILL:

Q. On commercial freight, arriving here at the port, I believe you said you received the orders from the shipper for unloading?

A. That is right.

Q. Do you also receive orders from the shipper to hold such shipments at times?

A. It could be, yes. He can keep it here in storage as long as he wants to.

Q. The shipper would have control over the movement of that shipment, wouldn't he?

A. He would, absolutely.

Q. The only restriction is that he could not physically take hold of the shipment?

A. That is right—without our permission.

Q. Now after such a shipment would be held for future export, when it is finally exported, would you receive a handling allowance?

A. I would receive a transfer charge from the warehouse to the pier.

Q. And would you receive a handling allowance from the railroad, or payment from the railroad for the handling?

A. As soon as I got a ship's reference and date, then I can bill the railroad for it.

Q. Ordinarily that notice which you receive from the shipper, how do you receive that, by mail?

261 A. Yes, that is right.

Q. Would you rent office space to such a shipper on the port property?

A. I never have.

Q. If a shipper wanted to rent office space on the port property, and it is available, would you rent it to him?

A. I presume so. There is no rule against it.

Q. And if that were done, he could give you the instructions right from the port, couldn't he?

A. First-hand.

Q. Now, you mentioned that in receiving instructions for the loading, or unloading—leave it for the unloading, of Army export freight, moving in the volume that it does today, such instructions would be rather complex?

A. I don't have any idea how to attempt to issue them, much less receive them.

Q. And in order to handle those complex orders it might be advisable for Army representatives to be at the port, wouldn't it?

A. I think so.

Q. So that the handling instructions which you receive from the Army here at the port would not necessarily be any different than if you received them by mail from some other point?

A. Well, it would be much more direct.

Q. But so far as the service you perform, it wouldn't make
262 any difference?

A. No.

Q. And if the Army were not at the port, and you handled the Army freight in the volume that is moving today, there would be quite a bit of paper work wouldn't there?

A. Just as much as there is now.

That is the important thing.

Q. Are you now advertising for any additional commercial freight?

A. We spend some money now and then on advertisements, yes.

Q. What type of advertising do you do?

A. Well, we show a pretty picture of the place, showing people we are still in business, and things like that.

Q. And holding yourself out to perform a public commercial terminal?

A. Yes.

Mr. KREBILL: That is all.

Exam. DIAMONDSON: Are there any further questions?

Mr. COUSINS: I have just a question.

RECROSS-EXAMINATION.

By Mr. COUSINS:

Q. If this commercial shipper stores the freight on the pier as you mentioned, he pays storage doesn't he?

A. That is right.

Q. Whether he had an office here or not, he still couldn't
263 touch the freight, could he?

A. That is right.

Mr. COUSINS: That is all.

Exam. DIAMONDSON: You are excused, Mr. Farrell.

(Witness excused.)

Exam. DIAMONDSON: We will recess at this time until 1:30.

(Whereupon, at 12:15 o'clock p. m., the hearing was recessed, to reconvene at 1:30 o'clock p. m., the same day.)

264 Afternoon session, 1:30 p. m.

Exam. DIAMONDSON: The hearing will be resumed.

COLONEL E. B. GRAY resumed the stand and testified further as follows:

Exam. DIAMONDSON: You may cross examine Colonel Gray.

Mr. KREBILL: Colonel Gray is being recalled for cross examination.

Exam. DIAMONDSON: You may cross examine.

Mr. COUSINS: Cross examination of Colonel Gray is waived.

Exam. DIAMONDSON: Are there any questions? You are excused, Colonel Gray.

(Witness excused.)

Mr. KREBILL: I want to offer Exhibits 1, 7, and 8 in evidence.

Exam. DIAMONDSON: Any objection?

Mr. COUSINS: No objection.

Exam. DIAMONDSON: Exhibits 1, 7, and 8 are received in evidence.

(Complainants' Exhibits No. 1, Witness Gray, and Nos. 7 and 8, Witness Farrell, received in evidence.)

JAMES J. BROZ was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. KREBILL:

Q. Will you state your name, address and position you hold with the Department of the Army?

265 A. My name is James J. Broz. I reside at 321 South Washington Street, Alexandria, Virginia. I am Assistant Chief, or Civilian Chief, Freight Traffic Branch, in the Commercial Traffic Service Division, of the Office of Chief of Transportation, Department of the Army, at Gravelly Point, Washington, D. C.

Q. Will you state your transportation experience for the record?

A. After two years of special study in transportation economics at Stanford University, Palo Alto, California from 1921 to 1923, I was employed by the Trans-Continental Freight Bureau at San Francisco, as a traveling accountant, and handled transit matters, classification problems, weights and claims for railroad on the Pacific Coast. During my association with this company, I traveled extensively over the lines of the Southern Pacific and Santa Fe Railways in California, Oregon and Arizona, from 1923 to 1926. From 1926 to 1935 I was employed in the Freight Traffic Department of the Southern Pacific Company in the General Office at San Francisco as a rate clerk, where I studied rate structures, constructed rates and assisted in the publication of tariffs. During the last five years of my service with the Southern Pacific Company, I prepared rate exhibits for formal hearings, before the Interstate Commerce Commission and State regulatory bodies. From 1935 to 1938 I was General Counsel and Traffic Manager for the Valley Motor Lines at Fresno, California. From 1938 to 1942 I was assistant rate expert of the California Railroad Commission, now known

266 as the Public Utilities Commission of the state of California. From 1942 to 1945 I was Traffic Manager of Basic Magnesium, Inc., at Las Vegas, Nevada. From 1945 to August 1951, I practiced law in Los Angeles, California, and since August 8, 1951, I have been employed by the Chief of Transportation, Department of the Army, at Washington, D. C.

Q. Will you briefly describe your present duties and responsibilities?

A. As Assistant Chief of the Freight Traffic Branch, it is my responsibility to direct and supervise the activity of the Port Traffic Section, the Freight Movement Section and the Adjustment and Classification Section. The Port Traffic Section has the duty of issuing releases for the movement of military traffic to the ports for export; the Freight Movement Section routes domestic and export traffic from and to various points throughout the country, and the

Adjustment and Classification Section negotiates rate adjustments—all common and contract carriers for both domestic and export movements by land of military property for all branches of the Department of Defense except the Navy. This section also has responsibility for preparing and presenting evidence in formal proceedings before the Interstate Commerce Commission and state regulatory bodies.

Q. Have you made a study of the complaint filed by the Government now being heard before the Commission?

A. I have.

267 Q. Have you prepared an exhibit which you will offer at this time, and about which you will testify in this proceeding?

A. I have.

Mr. KREBILL: I wish at this time to offer for identification the exhibit which appears just below the prepared statement. It begins "Statement Showing Chronological history of the Army Base Piers at Norfolk, Virginia, from 1918 to March, 1952."

Exam. DIAMONDSON: The Exhibit will be identified as No. 9.

(Complainant's Exhibit No. 9, Witness Groz, marked for identification.)

Mr. REYNOLDS: May I ask whether this is going to be offered as separate exhibits, or as one exhibit?

Mr. KREBILL: One exhibit.

By Mr. KREBILL:

Q. Will you explain the nature of your exhibit, and the manner in which it is compiled?

A. The parts of the exhibit about which I shall testify, are bound together in the order in which will be presented, and in addition to an index of them, which appears first in the file, there are a series of identifying tabs to which reference will be made during the course of my testimony, in order to identify the particular documents themselves.

At this point I would like to divert from the written manuscript and say I will refer to these separate parts of the exhibit if the Examiner pleases as part numbers of the exhibit in order to identify them for cross examination and convenience of counsel.

268 The first chronological history of the Army Base Piers would be Part 1 of Exhibit 9. If that is agreeable to the Examiner, because there are some 30 parts to this exhibit, and for ease in cross examination, it will be handy to refer to them by part numbers.

By Mr. KREBILL:

Q. Will you now proceed to identify the first part of your exhibit and explain it?

A. The first part of the exhibit is a brief chronological history of the origin, growth and development of the piers and warehouse facilities, currently known as Hampton Roads Port of Embarkation, and often referred to as Army Base Piers at Norfolk, Va.

This part of the exhibit is self-explanatory and appears under Tab "A".

At this point I wish to divert from the memorandum, and turn your attention to page 3 of Part I, which is this chronological history, and state that between the period 1 April 1947 and 30 April 1951, as shown on page 3, during this period very little Army freight moved through Norfolk, but that which did move was accorded the wharfage and handling allowance in the line-haul rates without extra cost to the Government. I would also like to point out in this exhibit that from the historical background of the piers themselves it has always been the intention of the carriers serving this port and these piers to grant this allowance and to absorb it out of the line-haul rates as indicated on page 2 of that exhibit, and particularly at the top paragraph on page 2

where the underlined portion of the statement reads "Also absorb up to four cents per hundred pounds of the charges proposed to be imposed by the respondent for wharfage and unloading of export, or loading of import traffic." That language was taken from the Commission's decision in 59 ICC 488.

Mr. COUSINS: Mr. Broz, if I may interrupt, if you are going to refer to this matter as an allowance throughout your testimony, may we understand that you do not mean an allowance in the sense of a refund to a shipper?

The WITNESS: That may be understood.

Mr. COUSINS: Thank you.

The WITNESS: Returning to the manuscript, on page 3; As a part thereof, I have also prepared a statement of the Terminal Operators who have from time to time, operated commercial public marine terminal service at those piers, and have shown the dates and periods during which reference has been published in the various tariffs of the terminal lines serving the Port of Norfolk. The purpose of offering this evidence is to demonstrate that private corporations acting as commercial public marine terminal operators at the Army Base Piers, have been listed by the carriers to identify the piers or facilities eligible to receive allowances for wharfage and handling services, (with certain exceptions listed in the tariffs), in connection with cars unloaded and handled over the Army Base Piers during such periods.

In response to Mr. Cousin's remark, I would like to state

by allowance I mean a payment or a concession, or a credit made by a carrier to a shipper in lieu of the carrier performing the service itself, usually by way of a deduction from the rate charged and authorized by the applicable carriers' tariffs.

Mr. COUSINS: I take that to be contrary to what you said to me.

The WITNESS: The shipper doesn't receive it. It is allowed in the line-haul rate. But somebody receives compensation for that service from the railroad.

Mr. COUSINS: That is the terminal operators.

The WITNESS: That is the terminal operator, yes.

Mr. COUSINS: All right.

By Mr. KREBILL:

Q. Will you next take up the subject of railroad traffic moving into the Hampton Roads Port of Embarkation, and describe such traffic?

A. There is a small amount of domestic rail traffic which moves into the Army Base Piers, for local consumption, but by far most inbound traffic consists of rail shipments for export.

In order to measure the scope of these proceedings, there appears under Tab "B", a statement showing the number of loaded cars received and forwarded at Hampton Roads Port of Embarkation.

for the period from 1 May to 31 December 1951, which 271 shows that 88.6 per cent of a total of 13,714 cars, or 12,153 cars were received during that period while 11.4 per cent of 1,561 cars were forwarded during the same time. Of the total number of cars received, 80.5 per cent were received from the Norfolk & Western Railway, Pennsylvania Railroad and Virginian Railway combined, the balance of 19.5 per cent were received from the other lines whose initials appear on the exhibit. When I say these lines delivered the traffic to the Base, I mean, of course, that with the exception of the Virginian Railway, which delivers its own inbound cars, the cars were switched to the Base by the Norfolk & Portsmouth Belt Railroad. I do not have the number of inbound carloads of traffic consumed locally, but will say that during October, November and December, 1951, Stevenson & Young, Inc. handled over 75,000 tons of traffic for export, and while I do not have the number of cars represented by these tonhages, at 15 tons per car it would amount to over 5,000 carloads during the three month period.

Q. Will you describe the various kinds of export traffic which is received at the Army Base by rail?

Mr. COUSINS: May I interrupt? When you talk about tons, you are going to talk about weight tons?

The WITNESS: I am talking about tons of 2,000 pounds, and

weight tons. I will talk about measurement tons, but I will explain what I mean when I come to that.

Mr. COUSINS: Off the record.

(Discussion off the record.)

272 Exam. DIAMONDSON: On the record.

The WITNESS: There are three main kinds of inbound railroad traffic for export movement. I am referring now to part 3, a one-page exhibit, under Tab "B". First, there is the traffic which is consigned to Port Transportation Officer for North Atlantic Constructors for the so-called "Blue Jay" Project. This consists of all kinds of building materials, vehicles, machinery, subsistence items and a large assortment of manufactured products of all kinds which originate at private enterprise points of production.

Second, there is the traffic consigned to Department of Army for shipment to overseas command, some of which originates at manufacturer's plants, or at military depots. In either case, such shipments move on Government bills of lading, consigned to the Port Transportation Officer, Hampton Roads Port of Embarkation, properly marked for overseas shipment.

Third, there is a commercial traffic, which moves on commercial bills of lading, consigned to Hampton Roads Port of Embarkation, in care of Norfolk Terminal Division of Stevenson & Young, Inc. marked for export. This traffic consists of various kinds of goods, normally exported by private enterprise engaged in the export trade, in this country.

By Mr. KREBILL:

Q. Does your exhibit show these various kinds of traffic, and the nature of the revenues, per car and per car mile thereon, and what they are, or would be, if accorded the allowances for wharfage and handling service?

273 A. Yes. Departing from my prepared statement again, I next take up the next part under Tab "B", which is a one-page rate exhibit in the heading it states "Showing Typical Commercial Export Shipments," and that could be marked Part 4.

Exam. DIAMONDSON: You said Tab "B?"

The WITNESS: Tab "C", pardon me.

Under Tab "C". The next two pages are a rate study of typical Blue Jay shipments which will be Part 5; the next four pages are a rate statement of military traffic, which will be Part 6. In answer to the question from Counsel:

Bearing in mind that Stevenson & Young are granted the allowance on such commercial traffic as they handle for the public generally, but that they are not paid by the railroads on the traffic

which they handle for the North Atlantic Constructors or the Department of the Army, I have prepared three separate tabulations, which appear under Tab "C", the first being a statement of the traffic handled by Stevenson & Young, Inc. showing representative shipments on commercial bills of lading moved into the Norfolk Terminals division of that firm here at the Army Base.

There are twelve shipments listed here, giving reference to the date of movement, car number, point of origin, commodity, and other pertinent data. I used these shipments, because they moved in box cars on which a handling allowance was applicable for unloading the cars.

274 There were several other shipments which moved in gondola cars, on which the only allowance made to Stevenson & Young was for wharfage, but I did not include any of those shipments in this statement. It will be noted that the amount of the wharfage and handling allowance varies depending upon the weight of the shipment, and that where the shipment weighs less than the minimum weight, the allowance is based on the actual weight. This exhibit is a study of the manner in which the wharfage and handling allowance works under normal commercial operations, where the services of a commercial public marine terminal operator are used by private shippers using the Army Base Piers for commercial export movement of their products.

Next I refer to a tabulation, which is part 5, showing traffic unloaded by Stevenson & Young for North Atlantic Constructors, or the so-called "Blue Jay" traffic.

While this exhibit shows the amount of wharfage and handling allowances, they were not actually granted by the carriers, and are portrayed on the exhibit to give the effect of revenues per car and per car miles, before and after the deduction of the allowance, in order that the earnings of the carriers may be determined. It should be noted of course, that the allowances are not deductible from the total revenues of all carriers participating in the haul, but that it is an absorpition to be deducted from the terminal carriers' division of the through rate. However, as there is no way of

275 determining the extent of the terminal carriers' divisions on these shipments, the exhibit has been prepared to reflect the effect which the deduction would have on the overall revenue of the carriers as a whole. At this point, it is perhaps well to state that nothing by way of allowances for wharfage or handling has been received from the terminal carriers on the traffic unloaded by Stevenson & Young, by either North Atlantic Constructors or by the Department of the Army, either Quartermaster Corps or Engineer Corps, since May 1, 1951.

We do not ask for the allowance for unloading on that traffic which the North Atlantic Constructors may have unloaded and

handled themselves, as they did in the case of certain heavy machinery, cranes and power shovels, and some other commodities, during the early part of last year, but on that traffic which was unloaded by Stevenson & Young, and which qualifies for the allowances for handling service, and wharfage, we do contend that the allowance is proper and should be made.

I'll add this at the bottom of that page, since November 1, 1951, all unloading service on NAC traffic has been performed by Stevenson and Young.

In any event, the allowance for wharfage should be made, regardless of whether the traffic was unloaded by the NAC or by Stevenson & Young, as this allowance is for the use of the piers and warehouse facilities, regardless of who unloads the cars, as long as the export rates apply to shipside.

By Mr. KREBILL:

Q. You have referred to terminal carriers. Who do you mean by that?

A. By the terminal lines, I mean the lines which bring the line-haul traffic into Norfolk, and who turn it over there to the Norfolk and Portsmouth Belt, or to the Virginian Railway, which delivers the traffic itself. I distinguish the terminal lines from the delivering lines. The Virginian happens to be both.

Q. Do you have a third tabulation in this series?

Mr. COUSINS: Just a minute. — I got stuck back where you began to say that Parts 4, 5, and 6 showed the dates of movement. I haven't found them yet.

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

The WITNESS: Yes, the next statement is similar to the last two in general character, but is designed to show the traffic handled by Stevenson & Young for the Department of Army. Army did not touch a single pound of this tonnage, and all of it should be entitled to the allowance for both wharfage and handling. The same method of rate showing has been employed in this exhibit, as in the last two, indicating the revenues per car and per car mile, before and after deducting the amount of the allowance sought.

By Mr. KREBILL:

Q. What have you to say about the level of the earnings after the deduction of these allowances?

A. Well, the allowances made to Stevenson & Young on their commercial traffic is evidence of the fact that where allowances of this character have been made over a long period of time,

in fact for about twenty-two years, from 1920 to 1942, there is a presumption of reasonableness which attaches to the rates after the deduction; I say "after" because the rates were made with the intention of the railroads performing the service, or granting an allowance for wharfage and handling on all movements of export traffic handled through Army Base piers, and since the terminal carriers granted the allowances for 22 years, and did not complain about the net revenues earned by them during those years, I say a presumption of reasonableness attaches to such earnings and practices by their uninterrupted observance over such a long period of time, without attack by shippers or by carriers.

Except for the horizontal increases and reductions in rates from Ex Parte 74 in August 1920 down to the present time, there appears to have been no change in the basic rate levels on export rates to the Port of Norfolk, other than those which may have been brought about in port differential cases, or by voluntary adjustment of the carriers themselves. In view of these circumstances we regard the export rates which apply today through the Port of Norfolk, after deducting wharfage and allowances, as maximum reasonable rates. Moreover, the rates paid on export 278 traffic moving through Army Base Piers are the full commercial rates, or balance of through rates, or balance of through rates on transit shipments, and that fact should be borne in mind, in evaluating the extent of the discrimination which the carriers' attitude has created against the traffic moving through Army Base Piers, and that which moves through other public piers in the Norfolk Port district.

Q. Will you explain this reference you make to discrimination in the existing rates or practice?

A. The element of discrimination exists in the fact that commercial shippers can handle their shipments through Army Base Piers for export, and receive the benefit of wharfage and handling or allowances therefor from the terminal carriers, but traffic of North Atlantic Constructors and of the Department of the Army cannot. It is not discrimination in a competitive sense, in that commercial traffic competes with military or "Blue Jay" traffic, but discrimination, per se, in that all kinds of traffic receive the same treatment from the time they arrive in the outer yards of the Army Base Piers, insofar as unloading and handling are concerned, that is, they are unloaded by Stevenson & Young, Inc.; they are accorded unloading at shipside, or unloading into a warehouse with subsequent movement to shipside; they rest side by side in the same general group of pier warehouses, or storage warehouses; they are handled by the same stevedores companies, 279 practically and no doubt quite often with the same crews; they are loaded aboard vessels at one or other of the piers at

which commercial cargo is loaded, on vessels using berthing space adjacent to the pier tracks at Piers 1 or 2, depending where space is available. Yet one class of traffic is eligible for the wharfage and handling allowance, because it is "commercial" traffic, while the other is not, because it is assertedly "military" or "government" traffic; or because of the fiction that "no allowance can be granted to a shipper who handles his own goods or who uses his own wharf and pier facilities" which is as near as I can come to describing the excuse given by the terminal carriers for not making the allowances.

Mr. COUSINS: Mr. Examiner, I object to this last answer, and ask that it be stricken from the record unless the witness is willing to say that he has drawn this factual conclusion from the testimony that he has heard from the prior operating witnesses. This last statement is a statement of fact relating to the operation of the piers, it is not a traffic man's statement at all, and I am willing to let him draw his own conclusion from the testimony he has heard so far, but not let him state these matters as a fact.

Exam. DIAMONDSON: How about that, Mr. Krebill?

Mr. KREBILL: I think the statements which he has made is in accordance with the record as it has been made up to now, and this witness is familiar with the traffic which moves through this
280 port in his position as Chief of the Freight Traffic Branch—the Civilian Chief of the Freight Traffic Branch, in the Office of the Chief of Transportation. He is thoroughly familiar with what goes on. I think he is qualified to make this statement.

Exam. DIAMONDSON: I will let the statement stand. As a matter of fact, some of this quoted portion of his statement is actually, as I understand it, taken from the decision of the Commission in the prior case here.

Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

By Mr. KREBILL:

Q. Does the Government handle its own shipments at Army Base Piers?

A. No, all shipments are handled by Stevenson & Young, without exception.

Q. Does the Department of Army, as an Agency of the Federal Government, use the pier and pier warehouse facilities as its own?

A. No, the Department of Army regards Army Base Piers 1 and 2 as commercial public marine terminal facilities, and its contract with Stevenson & Young is predicated upon full recognition of that fact. I have reproduced several pictures and advertisements from shipping publications and periodicals which have recently

281 publicized the fact that the Army Base Piers are as fully "commercial" in their character, as any piers or terminals, not only in Norfolk, Virginia, but anywhere on the Atlantic, Gulf or Pacific Coast. Of my own knowledge, I have read of the extent to which public use has been made of these piers, and have seen pictures, extracts from shipping guides, and other media, all of which have indicated quite clearly, that the Hampton Roads Port of Embarkation is a public terminal. Some of these reproductions are filed under Tab "D" in my exhibit.

Now I would like to ask that that Tab "D" and those three photostats be marked as Part 7.

By Mr. KREBILL:

Q. Have you prepared a study of the cost to the Department of the Army, for the handling and wharfage expenses, incident to the Movement of traffic for a three-month period, ending 31 December 1951?

A. Yes. I would like to refer to Tab "E," which is a four-page exhibit, the first page of which would be Part 8. In fact, that exhibit can be part 8, which consists of four pages, the first of which is headed "Schedule of Repairs and Rehabilitation costs incurred by the United States of America, Hampton Roads Port of Embarkation, on Army Piers 1 and 2, including pier wharf and adjacent railroad facilities."

I have a series of cost studies under Tab "E," designated Part 8, which were prepared at the request of the Department of the Army, and by way of introduction to them, it may be well
282 to explain the source of this information and how it is kept.

The Fiscal Division of the Hampton Roads Port of Embarkation, maintains a record of all physical equipment and property used for the handling and movement of traffic on the Army Base; also a record of all payments for services performed not only by Stevenson & Young, but by anyone else for labor, materials and supplies used in connection with Army's responsibility as a caretaker of the premises. The records indicate the amounts of money spent for improvements by way of capital additions to property, as well as for repair and maintenance thereof; and cost of current operations of vehicular equipment and machines used to transport or lift cargo from one place to another. Stevenson & Young rent Government-owned mobile equipment and pay a rental charge therefor under their contract with the Government to handle the unloading of cars, and movement of cargo to warehouses, or from warehouses to shipside. The records also indicate the amount of money paid by the Army to Stevenson and Young for services of unloading cars to piers, or to warehouses or to open storage. Since the handling allowance covers only one unloading,

it was our purpose to ascertain the cost for such service, exclusive of any other or further handling costs which might be incurred in moving the tonnage from one warehouse or open field storage to shipside. At the request of Army and the Office of Chief of Transportation, the following exhibits were prepared.

283 I am referring now to part 8, page 1, which is a statement of the capital expenditures for rehabilitation, repair, and dredging, incurred by the Department of the Army from 1 May to 31 December 1951, at Army Base Piers, in the aggregate amount of \$764,149.13. The amortization basis of this figure has not been given, but the investment would take 3,056,596 tons of export traffic to reimburse the Army, at the rate of 1¼ cents per 100 pounds, or 25 cents per ton for wharfage allowance, and since there were 75,000 tons or more handled during the last three months of 1951, or at the rate of about 300,000 tons per year, it will take ten years to work off that contribution to wharfage facilities at Army base piers.

I have no doubt that since this expenditure represents only 8 months work on the piers, that the ensuing ten years will witness a substantially higher cost in maintenance, additions and betterments. So while the Government can never hope to catch up by way of a wharfage allowance, it is nevertheless, a contribution to the expense of wharf and pier facilities, which would otherwise be borne by someone else, and while not necessarily the railroads, themselves, the latter would nevertheless be obliged to recompense the agency or company which would provide such aids to shipside delivery of export shipments.

I would like to depart from the memorandum to state that this figure as of 29 February 1952, on page 1, has increased from \$764,149.13 to \$925,088.66.

284 The third sheet in Part 8 shows the number of man-hours and pounds of freight handled by Stevenson & Young, unloaded from cars to warehouse or open storage areas, or from cars to piers, for the last three months of 1951. The number of pounds shown amounts to 75,125 tons, and supports the figure of 75,000 tons about which I have been testifying. The manhours worked by the labor crews, described as "casual laborers" indicates they handled about 1.6 tons per hour, or about 3,200 pounds per man, which is obtained by dividing the 75,125 tons by the 47.062 man-hours shown on the exhibit. When the time of checkers and labor foremen is added to this, it tends to reduce the figure to 1.25 tons or 2,500 pounds per man hour. A gang usually consists of seven casual laborers one checker and one foreman. . Occasionally there are five or six men in a gang and on rare occasions, there is no checker or foreman. The witness for Stevenson & Young has testified as to the methods used in working these labor crews.

Mr. REYNOLDS: I don't recall any such testimony.

The Witness: Mr. Farrell testified about that. If he hasn't, that is the way they operate.

The next exhibit shows the cost per ton of handling the 75,125.8 tons of export traffic, to be \$2.87 per ton of 2,000 pounds, this figure including the cost of extra labor and overtime.

I would like to depart from my prepared memorandum, and
285 call attention to page 2 of part 8, which sets out the cargo unloaded by Stevenson and Young under two classifications as to weight tons of 2,000 pounds, which are the weight tons referred there, totalling 11,979 tons, and the measurement tons, which are listed as 144 thousand, 136 tons for the three-month period. The unloading cost is shown to be \$192,310.60, to which must be added extra labor, and overtime, expended by Stevenson and Young, for which Army must pay, an additional amount of \$23,319.96. The sum of the unloading cost and the extra labor and overtime makes a grand total of \$15,630.56, which divided by the number of tons, 75 thousand, 125.8, makes \$2.87 a ton. If we receive the allowance from the railroads, that cost would be reduced to \$1.87 per ton, the difference being the 5 cents per 100 pounds, or the dollar per ton which we are seeking.

Now referring back again to my memorandum—

Mr. FISHWICK: May I ask a question for clarification? Do I understand on a measurement ton basis, roughly 14 measurement tons per weight tons, during that period?

The WITNESS: No. Those measurement tons, sir, are cubic foot tons that are figured out on a cubic basis. You will notice the cube there is 5,765,501 cubic feet. Now the average measurement ton under the contract between Stevenson and Young and Army is 40 cubic feet.

Mr. FISHWICK: Yes.

286 The WITNESS: And—

Mr. FISHWICK: As I understand it, during this period, you handled 11,979 weight tons?

The WITNESS: That is correct.

Mr. FISHWICK: That was the equivalent of 144,136 measurement tons?

The WITNESS: No. The measurement tons are in addition.

Mr. FISHWICK: Oh, are different. They are not the same then?

The WITNESS: On the one side you are paid on a measurement ton basis, and the other a weight basis. We fortunately have the total weight which is on page 3 of my exhibit, totalling 150 million pounds. So there are two separate units of measurement, weight tons and measurement tons.

Stevenson and Young are paid on both types separately.

Mr. FISHWICK: Is that shown on your exhibit?

The WITNESS: Yes, by deducting the 11,979 tons, from the

75,125.8 tons, which is the total they handled in that period, you then have 63,146.8 tons, which those measurement tons represent.

Mr. FISHWICK: 63 thousand?

The WITNESS: 63,146.8.

Mr. FISHWICK: That is roughly $2\frac{1}{2}$ to one.

The WITNESS: 2.28.

Mr. FISHWICK: Thank you.

287 The WITNESS: 2.28.

Mr. FISHWICK: Thank you.

The WITNESS: Returning now to the memorandum on page 12: The next two exhibits are to be analyzed in connection with each other. As has been testified, Stevenson & Young make use of a certain amount of rental mobile Government-owned equipment in performing its services for the Army. This equipment, owned by the Army, carries a certain amount of expense for depreciation, labor of maintenance and cost of parts. The theory behind this arrangement is to charge Stevenson and Young for the use of the equipment, as its amortized cost, plus repairs and maintenance cost to the Government.

I should perhaps at this time depart and mark the exhibits. There is a one-page statement entitled "Page 4 of Part 8," which shows the equipment utilized by Stevenson and Young, and I would like to call your attention to the depreciation, maintenance cost there, for the three-month period, of \$12,069.05. We will come back to that a little bit later. Turning that page, we then come to a statement which reads "Invoices to Stevenson and Young at Army Base Hampton Roads Port of Embarkation, Norfolk, Virginia, for rental of Government-owned mobile equipment under contract DA-44-046-TC-6, from 1 October to 31 December," and that will be Part 9. Now that exhibit consists of 3 invoices which are the invoices from Army to Stevenson and Young for this Government-owned mobile equipment which they rent, and by turning those pages you will see they cover the three-month period, and the sum total of the amounts paid there by Stevenson and Young are \$12,934.71. And now I will go back to my memorandum.

Mr. MEYER: Where is that figure you mentioned?

The WITNESS: It is in page 12 of my testimony, I am coming to it.

The next exhibit shows the expenses chargeable to depreciation, and maintenance for the three month period, October thru December 1951, and indicate it cost Army \$12,069.05 to furnish the mobile equipment to Stevenson & Young, and on the succeeding exhibit, which is part 9, consisting of several pages, and constituting the invoices which the Procurement Division of the Hampton Roads Port of Embarkation presented to Stevenson & Young for payment for use of these vehicles and equipment, the expense to Stevenson &

Young was \$2,857.47 in October, \$7,379.05 in November and \$2,698.19 in December for a total of \$12,934.71, which (practically) offsets the cost to Army for its depreciation and maintenance of this equipment. For that reason, I have not added this depreciation or maintenance expense into the finalized cost of \$2.87 per ton for the 75,125 tons handled during those three months. It goes without saying that if Army received the allowance of \$1.00 per ton for the wharfage and handling allowance at the rate of 5 cents per 289 100 pounds it would still be \$1.87 cents per ton short of recovering its out-of-pocket costs of having this unloading service performed, and its contribution to wharfage amortization.

Using these figures, in connection with the estimated 300,000 tons of export traffic per annum moving over the piers, it is costing Army in the neighborhood of \$861,000 per annum to handle its own unloading and absorb its own wharfage at Army Base Piers, which could be reduced about \$300,000 per annum.

I would like to depart from my memorandum at that point, to state on the rate studies I prepared showing the average revenue per car, on the three kinds of traffic, the average revenue per car, on the military traffic, before the deduction, is \$539.27, yielding an average of 70.4 cents a car mile. Twenty thousand cars a year at \$500 a car, is about \$10,000,000 gross revenue to the terminal lines and their connections serving this port. I am just trying to point out the ratio of what we are asking to what the defendants would be receiving in the way of revenue. While I am on the matter of average revenue per car, I would like to go back to Part 4 for just a moment, because the continuity will be preserved. Part 4, a one-page statement of revenue per car on commercial shipments, the average of those 12 shipments, before deduction, was \$341.13, yielding 51.4 cents per car mile, and after deduction, \$318.45, yielding 48.0 cents per car mile, as distinguished, or as compared 290 with the revenues per car and per car mile which I have given on the military traffic.

Mr. FISHWICK: Sir, may I ask on that: is that an actual movement or assumed movement?

The WITNESS: Every movement on those three rate exhibits is actual.

Mr. FISHWICK: In other words, you have the bills on commercial movements?

The WITNESS: We have information from Stevenson and Young at our request on the commercial movements made last year. We asked for that so we could make a comparison, and they gave us reference to inbound shipments moving on commercial bills of lading on traffic exported through this port during last year, and we took the precise commodities from the actual points of origin at the rates actually paid, and the allowances actually made. Returning to

page 13 of the prepared memorandum, about the middle of the page, the validity of this figure is borne out by the fact that the tonnage moved by North Atlantic Constructors alone, from about 1 April through 17 December 1951 amounted to 138,542 tons. Roughly speaking, the dividing line between Blue Jay traffic and Army traffic is about even, with Blue Jay having the largest tonnage.

By Mr. KREBILL:

Q. Have you prepared a series of exhibits to show the tariff provisions of the terminal rail lines serving Norfolk, Va. with respect to the absorptions and allowances on export traffic?

291 A: Yes, the next series of exhibits are under Tab "F", which begins with Part 10, which is a nine-page study of the Atlantic and Danville Railway. While we are at it we may as well number the rest of these terminal tariff references. Part 10 is a nine-page study. Part 11 is a three-page study, which includes the title page.

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: Departing from my memorandum until I get down to Pennsylvania Railroad tariff, I would just like to briefly point out some of the highlights of these carriers' terminal tariffs which relate to the provisions upon which we rest for our contention that the allowances should be made for wharfage and handling the Army Base piers.

If you will turn to page 5, of part 10, Item 295, is a definition of the term "wharfage" as published by the Atlantic and Danville, and that definition is rather generally followed by all terminal lines. The term "wharfage" as used herein means the use of wharfs in the receipt of traffic from or delivery of traffic to ships, barges, or other water craft, while lying alongside the wharf properties of the railway company. And immediately below that is the commonly understood definition, commonly-used definition, of "shipside."

Item No. 300. The term "shipside" means the place at the
292 port of entry at which railroads will receive import coastwise or intercoastal freight from ocean ships or vessels. Also the place at port of exit at which railroads will place export coastwise or intercoastal freight for receipt by ocean ships or vessels. This place is either "A" in or on cars placed on tracks on docks, wharves, or piers, or on ground floor docks wharves or piers, directly served by railroad tracks. And there is no definition as to the extent to which those ground floor docks or piers will be served except insofar as they may be within the particular pier or port area.

Now turning over to the next page, page 6—I am using this as a

typical example, because the Atlantic and Danville Terminal tariff has been recently published, Mr. Examiner, and it is fairly up to date and represents the modern definitions and descriptions insofar as this port is concerned. I make reference there to the fact that under Item No. 315, reference is made to the application of wharfing, or handling charges on two types of traffic, and reference is made to two groups under (1) on traffic originating at or destined to stations designated at Group 11 in Item No. 40 of Tariff, the linehaul rates applicable in connection with the Atlantic and Danville wharfage, handling, or other port terminal charges except where tariffs lawfully on file with the Interstate Commerce Commission specifically provide otherwise.

Now, the next item is under (2), on traffic originating at or destined to stations designated in Group 2, in Item No. 40, 293 of the tariff. The wharfage or handling charges shown below will apply, except where tariffs lawfully on file with the Interstate Commerce Commission specifically provide otherwise, will be in addition to the line-haul rates, and a reference then is made.

Now, if you will turn to Part 20, which was the last item or part marked, I would like to point out the connection between Part 20 and the terminal tariffs that precede it. This is a common exhibit. This exhibit gives reference to Serial Nos. 1, 2, 3, and 4, or to letters A, B, and C, and along the left hand side of the Exhibit for about five pages are references to geographical points or states, and these letters have reference to whether or not the wharfage and handling charge is included in the rate, or whether it will be in addition to the rate, or whether it will provide only when rates apply to shipside, and so on.

So now Part 20 must be referred to from time to time in studying these terminal tariffs as to the reference to the groups in which the points are located. I did not attempt to reproduce that geographical list in connection with every terminal tariff.

Now let us turn to page 7 of Part 10 that we have been discussing, and you will see Paragraph A(3) under Item 315, where reference is made to traffic originating at or destined to stations designated as groups 2 and 3, in Item No. 40, and this has reference to rates applicable to or from shipside, the wharfage or handling charges will be included in the line-haul rates. That is the third differentiation of the rule.

And then finally, (4) under that. In all other respects, the wharfage handling, storage and other charges, etc., will be in addition to the line-haul rates, and that is where the shipper has to pay a charge for wharfage and handling.

Now, that is about all I have to say with respect to that page.

Let us turn to page 8 of that exhibit. Under item 327, about the

middle of the page, you will notice specific reference made to the division of Stevenson and Young, Incorporated, that is, the Norfolk terminals division, under Item 327, under (1), it is stated on traffic originating at or destined to stations designated in Group 1, in Item No. 40, the line-haul rates applicable in connection with the Atlantic and Danville Railway Company. will include the wharfage, handling or other port terminal charges. You see what I have done, I have given you the general rule, now I'm coming to the specific rule applicable to the specific port, to the specific terminal operator, and I won't labor the point except to say the rules of specific application are the same as the rules of general application, and that Stevenson and Young, and this port, are entitled to the same consideration of the inclusion of those charges as they would be in the general application of the terminal tariff itself at all ports.

295 Mr. REYNOLDS: May I ask a question for clarification?

The WITNESS: Surely, sir.

Mr. REYNOLDS: Is it your position here that the Army traffic moves through the Norfolk terminal, through Stevenson and Young, Incorporated.

The WITNESS: Yes we do, Mr. Reynolds.

Mr. REYNOLDS: That is your position?

The WITNESS: That is our position. Now it is not necessary to testify about Part 11, Part 12, but I would like to testify about Part 13.

Now if you will turn to Part 13, I have special reason for calling attention to that set of extracts from the Norfolk and Portsmouth Belt Railroad, because it is a chronological history of the item which, if currently maintained, would provide the tariff basis for the granting of the allowance, or making of the absorption. You will notice there on the first page, under the title cover, page 2 of that five-page exhibit, the effective date of September 22, 1938. That was prior to World War II, and Item 100 at that time made reference to the Norfolk-Tidewater terminals, which was then the terminal operator operating at these piers. And stripped of all the extra language in there, that item says, for the use of the wharves, warehouses, slips, channels, tracks, and approaches, and other facilities at the Norfolk-Tidewater terminals, which are these Army Base piers, the Belt Line makes an allowance

296 equal in the amount of the charges provided in this tariff.

This tariff is Tariff 6-J, ICC 105, of the Norfolk Belt Railway, and that tariff made reference at that time to the wharfage charge of one cent per 100 pounds, and the handling charge of three cents per hundred pounds, and this item made reference to the allowance that was granted at that time for the use of the wharves, warehouse, and other facilities, and for other services rendered. Which meant the handling or the unloading of cars.

Let's follow that item 100 and see what happened to it. On July 1, 1940, by Supplement 14 to the Belt Tariff, the Transport Trading and Terminal Corporation was substituted for the Norfolk-Tide-water Terminals.

Turn now to page 3, and in June 8, 1942, the only change there was the Norfolk-Tidewater Terminals, Inc., were substituted for the Lambert Point Docks, Inc., Sewell's Point Division, so that doesn't mean anything.

Turning to page 4, the item was amended back to Lambert Point Docks, Incorporated, Sewell's Point Division. Still no change insofar as Transport Trading, and Terminal Corporation, which was then operating in these piers.

Coming now to the last page of this exhibit, which is page 5, we see the effective date of November 30, 1946, and in supplement 90 to the Norfolk Belt Tariff, 6-J, the Hampton Roads Terminals,

Inc. were substituted for the Transport Trading and Terminal Corporation, but the language of the Tariff item remained the same. Down through the years, from 1938, to 1946, there has been no change in the tariff item so far as making of an allowance to the operator equal in amount to the charges in the tariff for the use of the wharves, etc., etc., and for other services rendered, which meant the handling.

Now, we come to the last item, the demise, of Item 100-E. September 15, 1948, that item was cancelled by the Belt Railway with the note "Cancelled as it serves no useful purpose."

MR. COUSINS: That was the demise of 100-D.

THE WITNESS: It was the demise of 100-D, yes.

MR. COUSINS: You said "E."

THE WITNESS: I would like to go back to my memorandum, skipping Part 14, Part 15, and get to the Pennsylvania Tariff, Part 16: Beginning on page 14 of my prepared memorandum.

Turning to the tariff of the Pennsylvania Railroad, No. 1378-J, ICC 3007, (the tariffs being listed in alphabetical order), the following language is found in Item No. 305, Rule 47:

"Except as indicated * * * wharfage and handling charges published in Norfolk and Portsmouth Belt Railroad Company Tariff No. 6-J, ICC 105, will be included in the freight rate to or from Norfolk, Virginia, on export, import, intercoastal and coastwise freight traffic * * * when the freight
298 rate from or to Norfolk, Va., is 19 cents per 100 pounds (Rule 53) or higher, and when receipt from or delivery to vessel is in rail service over wharf properties owned or leased by Norfolk Terminals Division of Stevenson & Young, Inc. and operated by Norfolk Terminals Division of Stevenson & Young, Inc. as a public terminal facility of the rail carriers,

and finally, when Norfolk Terminals Division of Stevenson & Young, Inc. acting in the capacity of a public wharfinger, furnishes wharfage facilities and performs handling services for account of and as agent for the rail carriers on traffic that is neither consigned to or from, nor owned or controlled by Stevenson & Young, Inc."

The foregoing tariff excerpt, we believe, places Army traffic within the designated requirements to receive the allowance as the Norfolk Terminals Division of Stevenson & Young are leasing wharf properties at Army Base Piers; they are acting as a public wharfinger and as a public terminal facility of the rail lines, and they do perform handling services for account of and as agent for the rail carriers, on traffic that is neither consigned to or from, nor owned or controlled by Stevenson & Young. It would be a strained interpretation of the tariff which could read anything else into those words.

The tariff does not say anything about losing control of the goods, nor about having ready accessibility for switching service to the piers or wharves, nor anything about the ownership of the wharf or pier facilities, and certainly nothing about the ownership of the goods themselves, other than to preclude granting the allowance on Stevenson & Young's own inbound shipments, or goods. If this tariff provision should be interpreted not to include Army traffic, then Army traffic is surely being subjected to discrimination.

By Mr. KREBILL:

Q. How does the tariff provision you have just read, compare with other tariff provisions of the terminal rail lines serving the Army Base Piers?

A. Well, they vary slightly in their context, but the general result is about the same, namely, that if the line haul revenue is a certain minimum, and where Stevenson & Young act as the agent of the rail lines in providing the unloading services and the wharfage the allowances will be granted, to the extent they are published in the Norfolk Belt Line Tariff as charges therefor.

Q. Will you next take up the tariff of the Norfolk & Portsmouth Belt Line and point out the significant extracts from that tariff?

A. At this point we can depart from the memorandum, because I think I have covered everything I want to cover about the Norfolk Belt Tariff, other than to point out that in the extracts preceding Item 100 that I testified about, will be found the other provisions of the Belt Railway Tariff, and I see no point to continuing with that further.

I would like to state, however, that the Chesapeake and

Ohio Railroad, by specific tariff provision, states that it does not make any allowance for wharfage or handling charges at the Army Base Piers, but will absorb switching charges. The reason for this appears to be due to the fact that the lines of that carrier serve Newport News, Va. where it operates several piers, and is therefore in a position to accord wharfage and handling services on export shipments at that port with its own facilities.

By Mr. KREBILL:

Q. What is the present status of the tariff provision with regard to Stevenson & Young, Inc.?

A. By Supplement 128, effective 15 September 1948, the reference to Stevenson & Young, Inc. was cancelled, insofar as the allowance provision was concerned with the following brief announcement "Cancelled as it serves no useful purpose." It is pertinent to note that this latter publication did not carry a reference to a teardrop nor a diamond, as is usually done, to indicate an increase or a reduction, nor did it carry any reference to the usual wording, "Change resulting in neither increase nor reduction," when such references are usually published under the terms of Tariff Circular No. 20. It is also significant that this item was cancelled more than a year and five months AFTER Stevenson & Young, Inc. had embarked upon their operation of the Army Base Piers as a commercial public marine terminal operator.

Q. Have you prepared an exhibit to show the territorial extent to which various tariffs of the carriers make reference, as to specific provisions concerning wharfage, handling and terminal allowances?

A. Yes, the concluding exhibit of this series, which is part 20, is a statement showing the origins and destinations of the terminal carriers serving Norfolk, Va. which lists the points and areas, designating them A, B, or C, or 1, 2, or 3 or 4, depending on whether or not, the allowances are applicable. These note references are to be read in connection with the tariff provisions themselves, and relate to the competitive situation as between carriers serving such areas and territories.

The general practice is to grant the allowances where other carriers do so, but not to grant it where the traffic is noncompetitive. Generally speaking, the practices of the carriers are uniform, and the transportation rates of the carriers include the wharfage and handling charges, particularly where rates are applicable to shipside except on traffic from points in Alabama, Florida, Georgia, Mississippi and South Carolina, and from specified stations in Kentucky, Louisiana, North Carolina, Tennessee, Virginia and West Virginia. In the latter case, the rates must provide for shipside delivery, in order to include the wharfage and handling

charges. In all other instances, the wharfage and handling
302 charges are in addition to the line haul rates.

At this point, I wish to make quite clear that it is complainant's position that the granting of these allowances has nothing whatever to do with the maintenance of port differentials as between various ports, as the allowances are a separate and distinct and apart from the application of port differentials as between various ports, as the allowances are a separate and distinct and apart from the application of port differentials as such.

Nor do we contend for the separate publication of these allowances under a Section 22 Quotation as a concession to the Government. We do contend however, that the allowances are a matter of right, under the tariff provisions of the terminal lines, which would be and are accorded to private shippers using the Army Base Piers, and should be granted to the Army, since Army pays full commercial rates, the same as any other shipper. This statement is made with the hope that the issues in this case may be kept free and clear of any discussion of the protection or maintenance of port differentials as such, and be confined to the simple issue of whether or not the Army is entitled to the allowances under past and existing tariff publications of the terminal lines.

Q. Have you prepared a series of tariff extracts dealing with the shipside application of export rates to Norfolk, Va. and will you now refer to them?

A. Yes, Tab "G" is the next series of tariff extracts,
303 covering number of tariffs naming export rates which apply on traffic moving through the port of Norfolk, Va. and which apply to Army Base Piers. There is an index of these tariffs preceding the extracts themselves, for ready reference, and the exhibit is set up primarily to show the shipside application of such rates, and the meaning of the term "shipside" as defined in the tariffs themselves.

Exam. DIAMONDSON: That will be part 21, won't it?

The WITNESS: Yes, Mr. Examiner. Part 21 is a one-page statement, which is a list of seven tariffs.

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: The term "shipside" is used to indicate that export rail rates apply on shipments to be unloaded by the railroad delivering line, or its agent, on the pier and at the side of the vessel, at a point where the ship's sling is normally waiting to swing the cargo aboard the vessel. Often this also means unloading to a warehouse adjacent to the pier, or in such close proximity thereto, as to qualify within the meaning of the term "shipside."

Q. Will you now go through these extracts and refer to those which point up the application of line haul rates to shipside?

A. The first tariff of the Series, is Trunk Line Association Tariff 80-C, ICC A-694 of Agent C. W. Boin, and names class rates between points in the States of Maryland, New York, Ohio, Pennsylvania, Virginia and West Virginia to various ports, including Norfolk, Va. on export traffic.

Departing now from the memorandum, but I am going to make this very short: I call your attention to page 4 of Part 22, and while you are holding that, I call your attention to the Pennsylvania Railroad Terminal Tariff, Part 16, and ask if you will just hold that page and then refer back to Page 1 of Part 16, and I want to point up an interesting parallel. We are talking about Part 16, page 1, and we are holding page 4 of Part 22.

The Pennsylvania Railroad Terminal Tariff, 1378-J, original tariff, was published effective 1 February 1951, and Rule "B" of that terminal tariff was a very simple rule, consisting of a very few lines, which said, "The rules shown in this tariff, covering export freight, or freight destined to foreign ports, will apply on property consigned for export to all destinations not located in— and then it cited a few foreign countries to which export rates would not apply. That is, the rules in the terminal tariff would not apply.

But by supplement 8, effective 1 January, 1952, that rule was changed, as shown on page 1 of Part 16, with language reading like this: "Except as otherwise provided herein," etc., etc.— "rules shown in this tariff will apply," etc., etc.— "on traffic which does not leave the possession of the carrier, and is delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port, or, after storage or transit has been accorded by the carriers under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply, which traffic is handled direct from carrier stations to steamer docks, and on which required proof of exportation is given."

Now turn to the Tariff 80-C, and look at the language on page 4. Mr. COUSINS: Just hold it one minute, will you?

By Mr. KREBILL:

Q. Do you mean page 4 of Part 22?

A. Pardon me, page 4 of Part 22. The class rates in Boin's Tariff 80-C, apply on export shipments when exported direct from port stations named on pages 5 and 6 of tariff, etcetera, which does not leave possession of the carrier, and is delivered by the Atlantic port terminal carriers direct to the steamer or steamer's dock upon

arrival at the port, or after storage or transit has been accorded by the carriers under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations, to which export rates apply, which traffic is handled direct, from carrier stations to steamship docks and on which required proof of exportation is given. There is just more than a coincidence between the rule in the carriers' terminal tariff and the rule in the carriers' class rate tariff, and I want to point out particularly that as of 1 February 1951, the Pennsylvania Terminal Tariff did not have such a strenuous and restrictive rule, but that by 1 January 1952 it did.

I would like to point out that many of the modern tariff publications of the terminal lines, and the class rate and commodity rate tariffs of trunkline and CFA carriers do now contain language which makes these export rates restrictive to the point that the traffic does not leave possession of the carrier, and is delivered to the carrier agent, or delivered direct to the steamer, and that it is on traffic delivered to the party entitled to receive it, and that it is handled direct from the carrier's station to the steamship dock, and so on.

It wasn't that way so very long ago, and it seems to be very restrictive, and those restrictions should not apply at this port.

It is our contention that any rule of a restrictive nature, whether published in a class rate tariff, or in a terminal tariff, which would preclude the granting of the allowance, or the making of the absorption on Army traffic, would be unreasonable and would be discriminatory.

Mr. COUSINS: Mr. Broz, just for clarification: you are not suggesting that these rules that you have read apply only at Norfolk, are you?

307 The WITNESS: Oh, no, I am ready to admit that they apply at all ports to which the terminal lines have access.

Mr. COUSINS: Fine.

Mr. FISHWICK: May I ask, are you suggesting these divisions to which you have referred make the export rates inapplicable to military traffic, over the Army piers?

The WITNESS: It is possible that the strict interpretation of those class rates might preclude the application of export rates to these piers on the method under which traffic is handled here. Certainly, they are far more restrictive than the terminal tariffs have been under which we have been asking for the wharfage and handling allowances. Of course, the rates themselves are not an issue in this case, and I realize that. But what I am trying to do is to point out the terminal tariffs on which the wharfages and handling charges under which the rules and regulations are published, are

now making reference to the same type of clauses and language in the line-haul tariffs of the carriers themselves. And I am points out the fact I am worried about it, even though this isn't a rate case as such.

Mr. FISHWICK: You are not saying, though, carriers including the Pennsylvania, are not now giving you export rates?

The WITNESS: No, I am not saying they give us the export rates. They do give us the export rates from all the terminal lines I know of.

308 Mr. COUSINS: Yes, because if you had just read two paragraphs further on page 4 of Part 22, you would have seen why, wouldn't you?

The WITNESS: Yes, Mr. Cousins. There is a clause which states that "Export rates applicable on shipments exported direct from railroad terminals will apply on shipments consigned in bills of lading for export and through United States Naval Shipyards, Naval Bases, or Army Bases, or delivered to United States Government vessels docked thereat, on presentation of proper evidence of exportation."

Mr. COUSINS: There is no similar clause with respect to any other private piers, is there?

The WITNESS: So far as I know, there are none.

Exam. DIAMONDSON: If it hadn't been for that clause, you would have had to apply domestic rates, wouldn't you?

The WITNESS: I would say so, Mr. Examiner. Going through the other parts of Tab "G", I don't think it is necessary to testify about those other class and commodity rate tariffs, because they are all fairly self-explanatory, and it would serve no useful purpose.

By Mr. KREBILL:

Q. Have you prepared a copy of the typical contract between the railroads and Stevenson & Young, Inc. relating to the contractual nature of the terminal services to be performed by the latter for the railroad, at Army Base Piers?

309 A. Yes, under Tab "H", which is Part 30, is a copy of the contract between Norfolk & Western Railway Company and Stevenson & Young, dated 1 July 1949, which is self-explanatory and is said to be typical of the form of contract which this terminal operator has with other terminal lines serving the Army Base Piers, through the Norfolk & Portsmouth Belt Railway, and the Virginian Railway.

Q. What changes does this contract bring about, in the nature of the relationship which formerly existed between the railroads and shippers with respect to the granting of the allowance for wharfage and handling charges?

A. At that point I might say I do not know if that is the latest

contract, but it is said to be the latest and typical of other contracts.

310 Mr. FISHWICK: Before you answer that question, I would like to ask you a question. May I ask, where did you get a copy of that contract?

The WITNESS: We asked Mr. Stevenson of Stevenson & Young to study the contract and reproduce it for this case, in order that we may point out the relationship between the railroads and the Stevenson & Young.

Mr. FISHWICK: I see, you got it.

The WITNESS: From Mr. Stevenson, Mr. Farrell, or Mr. Dougherty, I know it came from their office, because Colonel Weed sent it to us in Washington.

Mr. FISHWICK: Is it a signed contract.

The WITNESS: This one is in blank; it is not a signed contract. The original is upstairs, if you would like to see it.

Mr. FISHWICK: We have no objection to your putting in the contract, but this one just happened not to be signed, and we wanted to be sure it was the contract.

The WITNESS: This contract was not signed, but it was a carbon copy of the one that was signed.

Exam. DIAMONDSON: Is it a contract that is in effect at the present time?

The WITNESS: It is, Mr. Examiner.

Mr. HANIFIN: Mr. Groz, do you consider the Chesapeake and Ohio Railway Company a terminal operator serving this base here?

The WITNESS: Yes, I do.

311 Mr. HANIFIN: You say in answer to that question you just read there, it is a typical form of contract which this terminal operator had with other terminal lines serving the Army base piers, through the Norfolk and Portsmouth Belt Railway and the Virginian Railway. Do you mean to conclude the C&O has a contract with Stevenson & Young to this effect?

The WITNESS: I do not know if they have, but since their tariff publishes no allowance for wharfage and handling, I assume they have not.

Mr. HANIFIN: Well, you indicated all terminal lines did, and I just wanted to clarify that point right now.

The WITNESS: It is my understanding there is no contract between the C&O and Stevenson & Young.

Mr. HANIFIN: Thank you, sir.

The WITNESS: In answer to counsel's question, and reading from my prepared memorandum, in the middle of page 20:

Where, formerly, the allowance was published in the tariffs, it is now a matter of absorption by the terminal lines from through

rates, so that the shipper pays nothing for his wharfage or handling expenses at the Army Base Piers.

By Mr. KREBILL:

Q. Will you explain that further please?

A. Formerly, where the allowance of 1 cent for wharfage and 3 cents for handling was published in the tariff, that allowance per 100 pounds was granted off the line haul rates to the shipper—shipper's representative, the terminal operator. The shipper 312 made his own arrangements with the terminal operator at the port for shipside delivery, thus the shipper would have the terminal operator unload the car and use the wharf facilities, and the railroads would grant the terminal operator an allowance of 4 cents (now 5 cents) for this extra expense, but it was the shipper's responsibility to arrange with the terminal operator to provide the service of unloading the car and moving the shipments to shipside.

In other words, the shipper, by making his own arrangement for wharfage and handling with the terminal operator, undertook to pay the terminal operator for those services, but the railroads assumed that obligation by making an allowance to the shipper's agent, the terminal operator. Today, the shipper pays the full line haul rate, but inasmuch as the railroads by contract with the terminal operator pay for the unloading of the car by such operator and pay him a certain amount for wharfage expense, the shipper no longer assumes this obligation because the expense is borne by the railroads and is absorbed in the line haul rate.

Mr. COUSINS: Now, Mr. Broz, your statement as to what the former arrangement was is your interpretation of the tariffs, isn't it?

The WITNESS: No, it is my interpretation of what Mr. Farrell said obtains at this port and other piers in years gone by.

Mr. COUSINS: According to his testimony this morning?

313 The WITNESS: According to what he said this morning, which I have heard him say before. In other words, the railroad would grant the allowance to the shipper, but would not pay him any money, but would allow that amount of money to the terminal operator after the service had been performed.

Mr. COUSINS: You got that from Mr. Farrell's testimony this morning, is that right?

The WITNESS: It is hard to say. I have talked to him a number of times. I may be confusing what he said to me on other occasions with what he said this morning. But if he didn't say it this morning, he said it at other times.

Mr. COUSINS: If you are willing to say this is your interpretation of what Mr. Farrell said to you, I will let it rest right now.

Exam. DIAMONDSON: Or your interpretation of the tariffs.

Mr. COUSINS: Did you answer?

The WITNESS: Pardon?

Mr. COUSINS: What is your answer?

The WITNESS: My answer is no. I am not going to rely on what Mr. Farrell told me. I have independent knowledge of these things.

Mr. COUSINS: Where did you get it?

The WITNESS: By studying the tariffs and by talking to different people.

Mr. COUSINS: Are you willing to say this statement is your
314 interpretation of the tariffs as they formerly existed?

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

The WITNESS: I think the answer is yes. It is my interpretation of the carrier's tariffs, as they existed, at the time the allowances were made to the terminal operator as published in the Norfolk & Portsmouth Belt Terminal Tariff.

Mr. FISHWICK: When was that?

The WITNESS: Prior to the time it was cancelled out of the tariff, in 1948.

Mr. FISHWICK: Prior to '48?

The WITNESS: Yes.

Mr. COUSINS: All right, go ahead.

By Mr. KREBILL:

Q. What effect has this change of policy had upon the tariff publication of the allowances?

A. It has had the effect of cancelling a great many open publications of the allowances, so far as shippers are concerned, and has developed a policy of referring in the tariff items to a contract which exists between the terminal operator and the railroad, whereby the terminal operator agrees to perform certain terminal services for the railroad, and in consideration for providing the wharfage facilities and performing the unloading of cars, the carriers agree to reimburse the terminal operator for such items at certain amounts, usually separate for the wharfage and for the unloading,
315 and varying as to the unloading depending upon the type or kind of commodity involved.

Q. In conclusion, Mr. Broz, what is the position of the complainant, as to the allowance or absorption of the wharfage and unloading or handling expense, with reference to the three kinds of traffic which you described earlier in your testimony?

A. As to the first class of traffic, namely commercial traffic, it is our understanding that the line haul rates today include an absorption of the expense of wharfage and handling, so that commercial

shippers do not have to pay anything to the carriers over and above the line haul export rates themselves. And to the so-called Blue Jay traffic, it is our contention that wherever such traffic is unloaded from cars by Stevenson & Young, Inc. that the carriers should absorb the amount of the wharfage and handling costs, —up to five cents per 100 pounds—so that The Corps of Engineers would not be required to pay Stevenson & Young, Inc., \$2.87 a ton over and above the line haul rates for the performance of a service which is identical in every way with the movement and handling of commercial freight at these piers, and moreover, that the railroads should reimburse the Corps of Engineers at the rate of 25 cents per ton for the wharfage facilities which are presently furnished free to the railroad lines serving the Army Base Piers.

316 As to Army traffic, our position is the same as I have just described in connection with Blue Jay traffic. There is no significant difference in the methods employed in handling that traffic, from that employed in the handling of Blue Jay traffic, so far as Stevenson & Young are concerned. The analogy which I am attempting to draw is this: a casual visitor to the piers may see three piles of freight stacked up in boxes; one pile will be commercial freight marked for overseas shipment to Europe, or import freight from Europe, marked for some American consignee; another pile will be similarly boxed or crated and marked with code symbols to indicate that it is destined for project Blue Jay; still a third pile of boxes and crates will be marked for overseas movement for some branch of the Army.

They all occupy space on the piers 1 or 2 adjacent to ship-side; their unloading from the cars was performed by Stevenson & Young; the movement of this traffic inbound to the Army Base by rail was identical in each case, except that the first category of commercial traffic moved on commercial bills of lading, or export bills of lading, whereas the latter two classes of traffic moved under government bills of lading, and this, only for the reason that it is the custom to ship military traffic on government bills of lading; full commercial rates are paid on all three kinds of traffic, even to the point of adding the Ex Parte 175 increases.

317 However, it appears to be the position of the terminal lines that since the Government owns the piers and the Government is a shipper, that the absorption of the wharfage and handling allowances shall not be made on that traffic. The entities of Government involved in this situation are entirely different and unique, and have no connection, one with another, except that they are all a part of the Government of the United States of America.

The Maritime Administration of the Department of Commerce is the prime custodian of Army Base Piers and acts as a lessor. The

Department of Army acts as a lessee, and as a sub-lessor, leasing back to the Maritime Administration a part of the property in order that that agency may re-lease a portion of the facilities to Stevenson & Young, Inc. for use by that firm as a commercial public marine terminal.

The status of the Army Base Piers 1 and 2 (except that part operated by the Navy) are unquestionably commercial in operation, commercial in their holding out to the public as to availability of use by all for commercial export purposes, and commercial to the extent they were so during the years from 1920 to 1942, prior to World War II.

The position of the complainant is that Department of the Army is a custodian, a caretaker, and an expeditor of traffic at the Hampton Roads Port of Embarkation. As an expeditor, it is interested in keeping in close touch with the movement of export military traffic to overseas destinations, but it does not interfere, it does not handle, it does not exercise any of the prerogatives of an owner or a shipper, beyond those relating to "expediting" the movement of the traffic, and even there, it does not exercise the prerogative of the Government's power as a sovereign, to retard the movement of commercial traffic and give preference to the movement of military traffic, from which it is therefore asserted, that none of the incidents of a shipper-owned facility, or shipper-owned goods can be said to apply to the movement of military traffic.

Mr. KREBILL: May we take a recess?

Exam. DIAMONDSON: We will take a short recess before cross examination.

(Short recess taken.)

Exam. DIAMONDSON: Come to order, gentlemen. You may cross examine.

CROSS EXAMINATION.

By Mr. COUSINS:

Q. Mr. Broz, just one or two points at this time. You said a few moments ago as I understand, the Army paid the full commercial rates on its export traffic. In saying that, what account do you give to Section 22 rates that the Army may use?

A. I was unable to find in the rate study that I prepared any Section 22 rates: When I took that list of commodities that moved into here, from various points, both commercial points of origin and depots, I turned them over to our rate staff to check both the commercial rates and the possibility of Section 22 rates.

319 They told me there were no Section 22 rates, but there were some balance of through rate on transit from the Army

depots. The only thing we have by way of Section 22 is under quotation No. 16. Transit is permitted on export traffic which moves through a military depot to the ports and is exported. So the balance of through rate does apply on that nature of transit. But that is the only section 22 that I personally know of. I will not say, however, that there won't be some commodities in that list on which there may have been a section 22 that my rate staff may have overlooked.

Q. As a matter of fact, we found records of quite a few shipments on Section 22 rates since the Army has been here.

A. Well, I think it would be advisable for your witnesses to put that in and show us the extent to which that does apply, because on these forty-three shipments which moved by Army, immediately prior to and immediately after 1 May this past year, every one of those 43 rates was the full commercial rate, and they were not shipments picked specifically. They were picked at random out of a file in our Port Traffic Section on consecutive movements.

Q. But there are Section 22 rates on certain commodities available, and to the extent that those commodities move here they would have the benefit of Section 22 rates.

A. Undoubtedly.

Q. All right. Now, one other thing: Is there any significance in the fact that you are able to obtain copies of commercial
320 bills of lading from Stevenson & Young, having in mind the provision in the Interstate Commerce Act that it is unlawful to reveal information as to shipments, as to the traffic of other shippers?

A. We asked Stevenson & Young to give us this information, and they gave it to us at our request. So the voluntary divulging of information by one of the parties to some business enterprise, would remove the necessity for secrecy or violation, I would think.

Q. Do they give it to you because they are under your control here on the pier?

A. No, I think they gave it to us as a matter of courtesy. Just as they gave Colonel Weed a copy of the Norfolk & Western contract. We would give them information also provided it was not surrounded by any classification of secrecy.

Q. I can well see why they should give the Army a copy of their contract which is their business, but when they give copies of bills of lading, covering the shipments owned by private shippers, that is another matter, isn't it?

A. I would say, Mr. Cousins, that the answer would be "Yes", if the person asking for the information were a private enterprise, but when the information is sought by a sovereign, or a government agency, which is not competing with any private business,

the purpose for which the information would be used would
321 not be to injure any private enterprise, as such, and the
purposes for which the information is sought could not be
harmful to the person who is represented by those commercial
bills of lading.

Mr. COUSINS: Mr. Examiner, when I objected to certain portions of this testimony by Mr. Broz, in which he attempted to describe the physical operation of this facility, you ruled, or you stated that the fact that he had not qualified to speak on the operation of the Army base would be taken into account, but I don't think your remarks were placed on the record, and therefore I would like to have a note made of my objection to any statements of his which are contrary to the evidence offered by the people who actually operate the Army base.

Exam. DIAMONDSON: Your objection will be noted on the record. Off the record, Mr. Reporter.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

Mr. COUSINS: Mr. Examiner, the defendants suggest that considerable time in cross examination can be saved if that examination is deferred until tomorrow so that we can study this lengthy exhibit somewhat this evening.

Exam. DIAMONDSON: Will the witness be available tomorrow for further cross examination, Mr. Krebill?

Mr. KREBILL: Yes, sir.

322 Exam. DIAMONDSON: All right, you are excused at this time.

(Witness temporarily excused.)

Exam. DIAMONDSON: Does complainant have anything further at this time?

Mr. KREBILL: No, we have nothing further at this time. We do wish to enter or introduce a little more evidence concerning the tracks and mileages in order to clarify some information which was given yesterday, but we can do that tomorrow.

Exam. DIAMONDSON: Very well. Defendants may proceed.

Mr. COUSINS: We call Mr. Hodkinson.

E. A. HODKINSON was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. COUSINS:

Q. Please state your name and occupation?

A. E. A. Hodkinson: I am employed by the traffic Executive Association of the Eastern Railroads. I am Manager of the Trunk

Line Commerce Bureau, office at 1 Park Avenue, New York 16, New York.

Q. Mr. Hodgkinson, are you generally familiar with the port practices that are under discussion in this case?

A. Yes, sir, I am.

Q. As I recall, you were a witness in the former proceeding?

A. I was.

Q. Will you please describe the practices of the Eastern roads relative to the port practices under discussion?

323 A. As a general proposition, American railroads do not load or unload carload freight. The obligation has been placed on the shipper to load, and the consignee to unload both by custom and by tariff provision. The general application of this principle is shown by the fact that it is embodied in Rule 27 of the classification, which reads as follows:

"Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at CL ratings or rates, except where tariff of carrier at point of origin or destination or stop-over station (as the case may be) provides for loading or unloading of CL freight by carrier.

"Section 2. Owners are required to load into or on cars heavy or bulk freight for forwarding by rail carriers, and to unload from cars heavy or bulky freight received by rail carriers, carried at LCL or any quantity rates or rating, which cannot be handled by regular station employees or at stations where carrier's loading or unloading facilities are not sufficient for handling.

"Section 3. Shippers must observe carriers' rules regulating safe loading of freight and protection of equipment. Weight of lading must be approximately the same on each side of the car, and freight in closed cars must be so loaded as to prevent any contact with car doors during transit.

324 "Section 4. When articles are loaded on open cars, small detachable parts must be removed and placed in barrels or boxes or secured within the article. Barrels and boxes must be encircled at ends with iron straps and securely attached to the articles or to floors of car. Such barrels or boxes must be specified on shipping orders and bills of lading. Fragile parts not detached must be protected."

Although there are some exceptions to the general rule, the exceptions exist only when specifically authorized by tariff provision which in all cases specify the conditions and the limitations under which the service will be accorded by the railroads. The Eastern Railroads which serve the ports from New York to Norfolk, i. e., New York, Newark, Philadelphia, Camden, Wilmington, Baltimore and Norfolk, undertake in their tariffs to load and unload port

freight under certain conditions. By port freight I mean export, import, coastwise, and intercoastal freight.

The service is not accorded all port freight, as the limitations specified in the tariffs exclude substantial quantities of freight moving through the ports, as my subsequent testimony will show.

I merely mention at this point that certain types of freight are not loaded or unloaded by the railroads; that there is a rate limitation excluding certain freight, and that with respect to all port freight, the service is accorded only on railroad or other public piers.

325 Furthermore, the tariffs at the ports mentioned contain no provision for the payment of allowances to shippers with respect to this practice, but provide only that the service will be accorded by the railroads.

The port freight rates, by which I mean the line-haul rates applicable to export, import, coastwise and intercoastal traffic, do not take into account the exception to the general rule under which the railroads load or unload port freight. They give no consideration whatever to the fact that some port freight is not accorded this additional service.

In other words, the level of the port rates is not affected one way or the other by these so-called port services, and never has been. I state this as a fact based upon my long experience in rate making, but there are numerous considerations which support my conclusion, which I will mention in a moment.

First, I want to express the opinion that if the free loading and unloading of port freight should be abolished, there would be no change in the port rates. During the past three or four years, the Eastern railroads have been seriously considering the discontinuance of the free loading and unloading service on port traffic, and the imposition of a charge to cover the service. Except for difficulties that have arisen in meeting the competition of the other ports throughout this country and Canada, it is my belief, based upon many discussions that have occurred, that this would have been accomplished by now, as it is generally regarded as a service

326 for which a separate charge should be made.

There has been no thought, however, of reducing the port rates in connection with this plan for the simple reason that those rates have not been inflated to compensate for the port services (they are now the same whether or not the service is rendered), and thus should not be reduced when the service now accorded is not rendered.

Another illustration of the same principle is afforded by free lighterage service in New York Harbor. As is well known, free lighterage is a costly and burdensome service, but if it should be abolished, as has been suggested from time to time, it is unthinkable that the port rates to and from New York would be automatically

reduced. The other ports, such as Norfolk, would be the first to object to any reduction of the New York rates because of the resulting dislocation of the port differentials. The New York rates are made on the basis of an historic relationship to the other ports and obviously the controlling factor is competition, not the amount of service rendered.

Now returning to the reasons for my statement that the port rates contain no element or factor to cover the port services:

1. In the first place, there are many inland line-haul carriers, such as the Wabash, Nickel Plate, who have a voice in the making of the rates but do not participate in the port services. The services are performed entirely by the local terminal carriers which themselves pay the cost. Whether port services are granted depends upon the terminal tariffs of the local carriers. The tariffs publishing the line-haul rates do not authorize the loading and unloading services.

2. The manner in which the port rates are made precludes any factor or element to cover the cost of the unloading service. For example, the port class rates are generally based upon the domestic rates to and from Baltimore as prescribed in the Eastern Class Rate Case, although in some instances the New York domestic rates became the port rates.

The basis for the port rates therefore is either the Baltimore or the New York domestic rates, but principally the Baltimore rates, and the port rates at the various North Atlantic ports were then established by applying the historic port differential relationships, i.e., Baltimore 3 cents under New York

Philadelphia 2 cents under New York

Philadelphia 1 cent over Baltimore

Norfolk same rates as Baltimore, to and from Columbus, Ohio territory and west.

These differentials apply to the great bulk of traffic but exactly the same system was used in making the port rates on the highest class of traffic which take different differentials. Since the domestic rates do not include loading and unloading, obviously the port rates made on the same basis could not take account of these services.

3. Furthermore, the cost of performing the service differs at the several ports, but obviously this is not reflected in the rates. The relationship between the rates at the several ports is governed by the differentials mentioned above.

4. The port rates apply alike to traffic which received the loading service and to traffic which does not. The carriers have never undertaken to load or unload certain classes of traffic, such as heavy, bulky articles, fungible goods, tank car commodities and freight moving in open top cars, yet the import or export rates apply to all of this traffic without regard to the difference in service.

5. The port rates are not affected by differences in costs and differences in practice at the several ports. At Baltimore, the railroads provide the port services only on their own piers, not on other public piers, and yet the same port rates apply. At Norfolk, the Chesapeake-Ohio Railroad applies the same port rate without undertaking to perform the service. At Newark, N. J., the port services were not accorded until the middle 1930's, although the port rates applied. In all of these instances the rates have been held not to be unreasonable, indicating that the port rates of themselves do not include the auxiliary services.

329 6. The cost of performing the port services is different at the different ports, and naturally changes from time to time. This has no effect upon the port rates. The cost to the railroads is entirely a private matter between them and their employes, or agents.

7. Of the ports I have mentioned, Norfolk is the only one where wharfage, as distinguished from loading and unloading, is included in the port services. This has no effect on the port rates.

8. When the Commission found in the City of Newark Case, 182 I.C.C. 51, that the refusal of the railroads to load lumber at Port Newark was discriminatory, the railroads cured the situation by discontinuing the free loading of inbound lumber at other North Atlantic ports. However, no change was made in the port rates.

All of these considerations show beyond question, in my opinion, that the so-called port practices are not taken into account in fixing the line-haul rates and, therefore, the reasonableness of the latter is not affected by the performance or non-performance of the services. As a corollary, I would say that if separate charges were to be established to cover the port services, as has sometimes been suggested, the imposition of plus charges would not justify any reduction in the port rates. In my opinion, the latter should and would remain the same.

330 There is a large volume of government freight moving through ports north of Norfolk. I have investigated the handling of traffic through those ports and the practices prevailing at such ports.

This investigation has developed the fact that no allowances are made to the Government in connection with any terminal practices or services, particularly loading or unloading.

Dealing first with New York—generally speaking, shipments have been consigned to the port transportation officer. A large portion of the traffic, if not most of it, is delivered in rail service to the Army Base over either the Bush Terminal R.R. or the Long Island R.R.

In connection with either delivery, the rail obligation ceases when cars are placed at point of interchange with Army. The Army performs all switching within the Base and unloads the cars.

Thus, the rail carriers do not unload the cars or assume the cost of unloading.

Large quantities of freight are also handled in lighterage or floatage services in New York Harbor. Sometimes delivery was made direct to Government or commercial vessels docked at the Army Base. At other times the freight was landed on the pier or dock.

These are the practices generally followed at New York in the handling of export freight.

There has also been a fairly large movement of Government freight for export through the port of Philadelphia.

Neither the Army nor any other governmental department is operating any piers or waterfront facilities at Philadelphia, nor have they done so since May 1, 1951. The Government freight for export through the port of Philadelphia is therefore handled over railroad, steamship or other public piers in the same manner and at the same piers at which commercial traffic is handled.

Government freight exported through the port of Baltimore has also been handled over railroad piers in the same manner as commercial freight. There are no piers or waterfront facilities operated by the Government at Baltimore.

By Mr. COUSINS:

Q. Mr. Hodkinson, when you said that neither the Army nor any other governmental department has operated any piers in Philadelphia since last May, you didn't mean to suggest that they had done so prior to that date, did you?

A. No, not Philadelphia. I have prepared a series of exhibits which I would like to identify at this time, which I am going to discuss a little later. Exhibit No. 10 is a 12-page exhibit, which is a statement of rates and distances between 106 base points.

(Defendant's Exhibit No. 10, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit No. 11 is a 4-page exhibit, and it is a statement comparing the rates from Base points shown to Baltimore, with rates for comparable distances from the same base points to interior points.

332 (Defendant's Exhibit No. 11, Witness Hodkinson, was marked for identification.)

Exhibit No. 12 is the definition of import and export freight as taken from various tariffs, and that is a two-page exhibit.

(Defendant's Exhibit No. 12, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit 13 is a statement or chart showing rules governing the application of export, import, intercoastal and coast-wise rates at the North Atlantic ports, which is a five-page exhibit.

(Defendant's Exhibit No. 13, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit 14 is a 3-page exhibit which deals with the Port of Baltimore.

(Defendant's Exhibit No. 14, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit No. 15 is a two-page exhibit which deals with the Port of Wilmington.

(Defendant's Exhibit No. 15, Witness Hodkinson, was marked for identification.)
with the Port of Marcus Hook.

(Defendant's Exhibit No. 16, Witness Hodkinson, was marked for identification.)

333 The WITNESS: Exhibit 17 is a 3-page exhibit, which covers the port of Philadelphia-Camden.

(Defendant's Exhibit No. 17, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit 18 is a one-page exhibit, Trenton, New Jersey.

(Defendant's Exhibit No. 18, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit 19 is a tab. which deals with the Port of Newark.

(Defendant's Exhibit No. 19, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit 20 is a 6-page exhibit, the history of port differentials.

(Defendant's Exhibit No. 20, Witness Hodkinson, was marked for identification.)

The WITNESS: Exhibit 21 is a five-page exhibit, which lists privately owned or privately operated facilities.

(Defendant's Exhibit No. 21, Witness Hodkinson, was marked for identification.)

The WITNESS: And Exhibit 22 is a one-page exhibit listing the cases in which the Commission has considered the differential rela-

tionship of rates on export and import traffic to and from North Atlantic ports.

(Defendant's Exhibit No. 22, Witness Hodgkinson, was marked for identification.)

By Mr. COUSINS:

334 Q. Please explain what these exhibits show?

A. Exhibit No. 10, which is a statement of the class rates and distances, between 106 Base points, to Baltimore, Norfolk, New York, Philadelphia, Albany, and Boston, is designed to show several things: First, that Norfolk is being treated very favorably in the matter of export rates—export and import rates:

Secondly, that the Baltimore domestic rate generally sets the import or export rates, except as I have said, in some few instances New York sets the rate.

The real significant portion of this exhibit is the fact, as shown on the recapitulation sheet, where we show the mileages page 12. The average miles from 106 points to Baltimore is 698 miles.

Q. What?

A. 690.8 miles, or 691 miles rounded out. To Norfolk it is 834 miles. There is a difference of 143 miles, but in most instances the rate to Norfolk, on export traffic, or from Norfolk on import traffic, is the same as the rate from Baltimore, despite that large difference in mileage.

There are some instances where Norfolk rates are higher than the Baltimore rates, but in instances of that kind there is very much more than the average differences of 143 miles.

Take the first sheet, we have 9 instances where the Norfolk rate is precisely the same as the Baltimore rate on import and
335 export traffic. There are two instances where the Norfolk rate is higher. The first of those is Akron, Ohio. Akron is 429 miles from Baltimore, but 621 miles from Norfolk. There is 42 cents for 100 pounds difference in the first class domestic rates, but only 23 cents difference in the import and export rates. That is for first class. The other instance on that sheet is Ashtabula, Ohio.

Here again the difference in the mileage is from 429 to 628. Wherever the Norfolk rate is higher than the Baltimore basis it is for short-haul points so far as Baltimore is concerned, very much longer distances so far as Norfolk is concerned.

Now to Baltimore, as I have said, the domestic rates and the import and export rates are the same. On domestic traffic to Baltimore, there is no unloading service performed at all. The carriers do not hold themselves out to unload any domestic traffic, or to load any domestic traffic at Baltimore, yet the rate is precisely the same.

That being so, it naturally follows when the import or the export rate is precisely the same as the domestic rate, and there is nothing in the domestic rate to be unloaded, then there can't be anything in the export rate for loading or unloading.

This is further borne out I think by my next exhibit No. 11.

Exam. DIAMONDSON: Before you leave that one, Mr. Hodgkinson, are those distances the short-line distances?

336 The WITNESS: Yes, sir, those are the short-line distances, that we have recently compiled for use in connection with the 28300 class rates which we published to take effect on May 1.

In my next exhibit of four pages, I have taken the same base points, and have shown the mileage from Baltimore to the Port of Baltimore, and then I have taken the mileages within that same grouping. In other words, the rate group into which Baltimore would fall, from Akron, Ohio, would be the mileage group 421 to 440. All distances under the 28300 class rate scale falling within that particular group, the first class rate would be \$2.16. Then I have taken a number of points that would fall within that same mileage block, 421 to 440.

They would take the same rate. Obviously, there is no such terminal service at Elkton, Virginia, or Elkhorn, Wisconsin, as there is at Baltimore, Maryland. The same would apply to any point that one might pick in the exhibit. Take Cincinnati, Ohio, to Baltimore. That is a mileage block of 541 to 560. The first-class rate, under the docket 28300 scale, would be \$2.45. A rate of \$2.45 would also apply from Cincinnati, Ohio, to Doswell, Virginia, or Harrisburg, Pennsylvania, Irwin, Virginia, or Shamokin, Pennsylvania, all of which are interior points, but at none of which is there any provision for unloading, or loading on the part of the carriers.

As a matter of fact the only points I know of in these United States where the carriers have undertaken to do some of
337 this unloading are the port cities. Even today we gradually from time to time are eliminating commodities from the free unloading service. One of those we succeeded in having a charge accessed for unloading was fruits and vegetables at New York. Those charges have been in effect, and we have been collecting them since November 1949.

The case went back to the Commission and it is under review at the present time. But there was a case where we previously performed the unloading service free for fifty years, and the Commission permitted us to access a charge without any change in the rate.

I think another—

Mr. KREBILL: May I interrupt just there. What is the situation of that case you just gave?

The WITNESS: I&S Docket 5500.

Mr. KREBILL: Do you have any decision or reference on it, or citation?

The WITNESS: I haven't got the citation. It just occurred to me, as a matter of fact, while I was going over this.

Mr. COUSINS: Unloading of fresh fruits and vegetables.

The WITNESS: Unloading of fresh fruits and vegetables, at the Ports of New York and Philadelphia—domestic. You take the New York situation again; the Jersey interests sometime ago wanted to get a lower rate to Jersey by reason of the fact that the terminal services were not precisely the same there at 338 Jersey City or Newark, as they were at New York or Brooklyn, but the Commission refused to make any change in the rate.

Exhibit No. 12 is—

By Mr. COUSINS:

Q. Let me ask you first—why are the port rates to Norfolk so low compared to the other ports?

A. Well, the port rates to Norfolk are low because of port competitive reasons, Norfolk has been grouped historically with Baltimore and, generally speaking, has taken the Baltimore rate, despite this difference in mileage.

Exam. DIAMONDSON: Despite what?

The WITNESS: Despite the differences in mileage. If the rate was to be made more nearly on a mileage basis, Norfolk would be more on the New York basis of rates, rather than the Baltimore.

By Mr. COUSINS:

Q. Or closer to its own domestic rates?

A. Or closer to its own domestic rate. It is not nearly as close to its own domestic rate as Philadelphia or Baltimore or New York.

Q. All right.

A. That also is shown on page 12 of my exhibit No. 10.

Exhibit No. 12 is a definition of the import traffic and export traffic.

The import rates, it will be noted, applies only on traffic delivered by the rail carriers to ship sides or dock, or when a certificate is filed with the inspection bureau there is one provision on 339 this page that I call attention to, and that is under Note A, in order to obtain the benefit of import rates, it calls for the filing of a certificate with the Eastern Weighing and Inspection Bureau. Right under that is a specific provision, the loading of

cars will be at the expense of and be performed by the shipper or owner of the freight or his agent.

The export rate is only applicable when the provisions of the tariffs have been followed. An exception has been made for the Army, but generally speaking, the export rates are not applicable when the traffic leaves the possession of the railroad.

There is a specific provision in practically all tariffs to that effect. On this exhibit, detailing the countries, it goes on to say on line 22 of page 2 of the Exhibit, "When exported direct from port stations named in this tariff, or as amended, and will only apply except as otherwise provided herein on traffic which does not leave possession of the carrier and is delivered by the Atlantic port terminal carriers direct to the steamer or steamers' dock."

That same provision applies at Baltimore, and at Philadelphia, and Wilmington and Trenton.

Exhibit No. 13 is similar to Exhibit 12, and once again it provides that in order to obtain the export rate the traffic may not leave the possession of the carriers except where specific provision is
340 made for freight moving export freight, exported direct from railroad terminals, will also apply to shipments consigned on bills of lading for export handled through United States Navy yards, naval bases, or Army bases, or delivered to United States Government vessels docked thereat on presentation of proper evidence of exportation.

Exhibit No. 14 is a statement setting forth the regulations of the rail carriers serving the port of Baltimore, Maryland, covering the service for loading and unloading of freight.

By Mr. Cousins:

Q. I don't believe we need to explain these tariff provisions further, do you, Mr. Hodkinson?

A. I think not. I think this exhibit is self-explanatory. We do not undertake to unload from cars to open piers, and we do not undertake to pay any shipper for the service.

Exhibit No. 15 covers the Port of Wilmington.

Exhibit 16, the Port of Chester and Marcus Hook.

Exhibit 17, Philadelphia and Camden.

Exhibit 18, Trenton, New Jersey.

Exhibit 19, Port Newark, New Jersey, and that is the end of the tariff examples.

Exhibit 20 is a history of the port differentials, and it is to and including page 4, except the last two paragraphs. This exhibit is identical with the exhibit in ICC Docket 13,548, Maritime Association, Boston Chamber of Commerce, 95 ICC 583, and shown in the I.C.C. Report as Appendix B. The balance of it, however,
341 is new.

Exhibit 21 is a statement showing industries being pri-

changed so as to make those rates applicable over Army and Navy Bases. Toward the end of World War II the railroads made a special concession with respect to the import rates, i.e., they gave the Government the benefit of import rates at Army and Navy Bases on surplus war material returned from abroad.

This was done by Section 22 agreement and otherwise the
370 import, coastwise, and intercoastal rates are still not applicable on traffic handled over Army and Navy Bases. On the West Coast the tariff concession with respect to export rates was not made and the port rates do not apply on traffic handled through Army and Navy Bases, except to the extent that special concessions have been made under Section 22.

The tariff making the export rates applicable, as they are today on the traffic involved in this case, was wholly contrary to principle, and it has not been made to apply in favor of commercial shippers. The railroads publish a full line of domestic rates to cover traffic that originates or terminates at the ports and there is no reason to conclude that the domestic rates so applied are unreasonable. In fact, the greater portion of the domestic rates have been prescribed by the Interstate Commerce Commission.

Furthermore, the very reason for the export rates does not apply to Government traffic. Export rates have their origin in the desire of the railroads to stimulate export business and they have customarily been somewhat lower than the domestic rates merely for this purpose. Obviously the Government is not engaged in business like American manufactures and thus there is no similar need—and no advantage to the railroads—for providing export rates on Government traffic. This has been recognized by the Government itself and in World War I, during the period of Federal control of
371 the railroads, when the Government was practically the sole exporter, one of the first actions taken by the Federal Administrator was the cancellation of export and import rates. This was done in General Order No. 28.

When the railroads amended their tariffs in 1941 to make the export rates applicable over Army and Navy Bases, they had no intention of also according the free unloading service. There is nothing inherent in export rates to suggest that they include the unloading service. They are not published as "shipside rates" in the sense that unloading is included and, as I have already indicated, the export rates do not include unloading unless the terminal carriers at the port so provide.

When they do so, their local tariffs offer something over and above any service provided in the tariffs publishing the line-haul rates. As I have already pointed out, the terminal carriers have restricted their port practices so that the export rates do not as a fact include

the unloading service on various types of traffic and in certain situations.

Thus, in the prior Norfolk case the Commission correctly found that according the export rates to the Government was a concession which did not necessarily require a second concession, i.e., the unloading and wharfage services. There is no basis whatever for a contention that the export rates include compensation for the port services and that the Government is paying for service that it does not receive.

372 Q. In a dissenting opinion in the prior case, 269 I.C.C. 141, at page 150, a dissenting Commissioner said:

"The Army moves traffic over an unidentified pier at Philadelphia and receives an allowance of \$1.17 a ton through the operator who acts as its agent. The Army unloads its less-than-carload freight at Baltimore and receives an allowance therefor. The report is in error in stating that no allowance similar to that at Norfolk is made at New York, Philadelphia or Baltimore. The conclusions drawn from that statement are necessarily without any factual basis."

Will you please comment on that statement.

A. The statement is in error. During the period involved in the prior case and since that time the railroads have paid no allowance to the Army for unloading cars at Philadelphia. There was and is no pier at Philadelphia operated by the Army. The only intimation of such a payment in the record was reference to a pier at Philadelphia operated by the Norfolk Tidewater Terminal and there has never been such a pier at Philadelphia. In the Port of New York there are certain piers operated by the Army, but when cars are delivered at those piers the railroads do not perform the unloading and neither do they pay any allowances.

At all of the North Atlantic ports reached by the Pennsylvania Railroad that Company has paid no allowances for unloading carload freight to the Army or any other shipper, and so far as I
373 can find the practice of the other railroads has been similar.

It is true, as the dissenting opinion states, that at Baltimore we paid the Army for unloading certain less-than-carload freight, but that is not contrary to general practice because the railroads ordinarily undertake to unload less-than-carload freight at their station facilities.

Q. In a dissenting opinion in 264 I.C.C. 683, at page 694, Commissioner Alldredge said that the validity of the restrictions on the port practices "rests more upon the necessity of policing the transactions in order to prevent violations of the law than upon any essential differences of the transportation services performed." Will you please comment on that statement.

vately-owned or privately-operated facilities, located within the New York Harbor, having both a railroad siding and a deep water pier, where carload freight may be interchanged between railroad cars and vessels.

All these concerns do their own loading and unloading, and do not make any allowances.

Q. And the remaining pages?

A. The remaining pages cover various other points than New York Harbor. Page 2 covers various points in New Jersey and Delaware. Page 3 shows Philadelphia and Camden. And page 4, the Chester-Marcus Hook area. Page 5, the Baltimore area.

Q. I understand another witness will show the private piers in the vicinity of Norfolk?

A. Yes, sir.

Exhibit No. 22 is a list of the cases in which the Commission has considered the differential relationship of rates on export and import freight, to and from North Atlantic ports. This is introduced as a matter of convenience to the parties.

That is all I have on direct.

Mr. COUSINS: Cross examine.

Mr. KREBILL: Mr. Examiner, some twelve exhibits have been introduced by this witness, and I think we could save time again if we could pass over the cross examination of this witness until tomorrow morning, and give us a chance to go over this. Otherwise, I will just have to go through it paragraph by paragraph, and probably ask a lot of questions I wouldn't otherwise ask.

Exam. DIAMONDSON: Will the witness be available tomorrow morning, Mr. Cousins?

Mr. COUSINS: I would like to have the witness answer that.

The WITNESS: I would have liked to get away tonight, but under the circumstances I would like to get away tomorrow.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

343 R. V. BULMAN was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. MEYER:

Q. Will you please state your name, address and position with The Virginian Railway Company?

A. My name is R. V. Bulman, Terminal Building, Norfolk, Virginia and I am Assistant Car Accountant of The Virginian Railway Company.

A. In my opinion, that puts the defense of this case upon too narrow a ground. While the application of export rates depends somewhat, although not entirely, upon certain policing rules, the assumption of terminal costs has an entirely different basis. As I have already pointed out, the railroads have undertaken to unload port freight only to the extent that this extra service seems necessary to facilitate the orderly flow of port traffic.

They have attempted to restrict the practice as narrowly as possible for the valid reason that they cannot afford to load and unload all port freight under all circumstances. It has long been the opinion of the railroads that the free port services should
374 be abolished entirely and except for competitive situations at the various ports in this country and in Canada, I believe that the practice would have been abolished by now. The cost of handling water-borne traffic with all of the incidental services is so great that it is doubtful whether it is a compensatory business and the railroads simply cannot afford to have the free port services extended beyond their present limitations and, in particular, to the freight handled over private piers.

Q. Can you state whether or not Army freight has moved and is moving through other North Atlantic ports than Norfolk?

A. There have been movements of large quantities of Army freight through the port of New York and lesser quantities through Philadelphia and Baltimore.

Mr. COUSINS: Mr. Examiner, it is possible I may want to ask this witness one or two more questions in the morning in direct before he is tendered for cross examination, but this is the bulk of his testimony, and counsel for complainant desires a chance to examine it, so I suggest we defer the cross examination until tomorrow morning.

Exam. DIAMONDSON: That may be done.

You are excused temporarily.

(Witness excused.)

Exam. DIAMONDSON: We will adjourn at this time until 9:30 tomorrow morning.

(Whereupon, at 5:05 p.m., Wednesday, March 26, 1952, the hearing in the above entitled matter was recessed to 9:30 a.m., Thursday, March 27, 1952.)

Q. Will you please make a brief statement with respect to your experience with the Virginian Railway?

A. I was first employed in the Car Accountant Office of The Virginian Railway Company in 1920 and since that year have held various positions as Clerk, Chief Clerk and since April 1, 1943 the position of Assistant Car Accountant.

During this period I have had supervision over the keeping of records on approximately 15,000 Virginian Railway cars and 2,000 foreign cars daily. I compile many operating statements and make periodic checks of terminals in a program to expedite traffic and see that cars are placed promptly on arrival. I am fully acquainted with the handling of cars both in transit and in terminals and with records pertaining to such operations.

Q. Have you prepared or caused to be prepared a map showing the Army Base area at Norfolk, Virginia?

A. I have and ask that it be marked for identification as Exhibit No. 23.

344 (Defendant's Exhibit No. 23, Witness Bulman, was marked for identification.)

Q. Do you have any comments to make concerning this Exhibit?

A. Exhibit No. 23 is a sketch map drawn to a scale of approximately 400 feet to an inch and shows the Army Base property at Norfolk, Virginia, extending from QM Junction to the Elizabeth River. The property may be divided into two sections—that portion extending from QM Junction to Hampton Boulevard, a distance of approximately 2 miles. The map does not show this entire distance as will appear from the break at a point in the track near the Navy engine house. This particular tract contains approximately 78.06 acres according to Permit MA-111 from the Maritime Commission to the Army, dated April 30, 1951.

The other track of land extends from Hampton Boulevard to the Elizabeth River and contains approximately 561.67 acres according to said Permit. The larger track is further divided into two portions, the northern portion being the Navy Permit Area and the southern portion being the Army Permit Area, the Navy portion being outlined in red and the Army portion being all that part of the second track south of the Navy Permit Area. The other important points shown on said sketch are the following:

(a) The Navy Uptown Yard and the Army Uptown Yard, sometimes called new tracks and old tracks, respectively, are located east of Hampton Boulevard.

345 (b) The yard office and the fire station are located at approximately the eastern end of Storage Yard No. 1 which serves Pier No. 1.

(c) The tracks on the piers are numbered 1 to 14, respectively.

375-376 Before The Interstate Commerce Commission

Docket No. 30939

In the Matter of

UNITED STATES OF AMERICA

vs.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL

Stenographer's Minutes of Hearing of March 27, 1952

Conference Room, Port Headquarters Building, Hampton Roads
Port of Embarkation, Army Base, Norfolk, Virginia, Thursday,
March 27, 1952.

Met, pursuant to adjournment, at 9:30 o'clock a.m.

{ Before:

SAMUEL R. DIAMONDSON, Examiner.

APPEARANCES:

(As heretofore noted.)

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PROCEEDINGS

Exam. DIAMONDSON: The hearing will be resumed.

JAMES J. BROZ resumed the witness stand and testified further as follows:

Mr. KREBILL: I understand it is agreeable with the Examiner and defendant's counsel to proceed with the cross examination of Mr. Broz at this time, and he is recalled to the stand for that purpose.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION

By Mr. COUSINS:

Q. Mr. Broz, I gather from your testimony that there are a good many things in this case about which we are not in disagreement. I assume you will agree with me that the unloading of carload freight is an exception to the usual rule?

A. Yes.

Q. And that the unloading of export freight is accorded only within certain limitations defined in the tariffs?

A. That is correct.

Q. You will agree, also, from an examination of all of the tariffs,

beginning at the southernmost track on Pier No. 1 as track No. 1 and ending at the northernmost track on pier No. 2 as track No. 14. The map does not show it but the tracks down the center of each pier are within the building and are depressed tracks so that the floors of the cars are level with the floors of the piers. On the aprons on each side of each pier there are two tracks, called apron tracks, which are not depressed and are used for direct loading, that is, these outside tracks are for open top car freight.

(d) There are eight major warehouses, warehouses 1 to 5 being within the Army Area and warehouses 6, 7 and 8 being within the Navy area.

(e) The Army Base is served by the Virginian Railway and the Norfolk & Portsmouth Belt Line Railroad. The first named railway enters the base at a point marked "QM Junction," which is about a mile and a half east of the point designated as "Navy Engine-house" on the Exhibit, although observation of the sketch Exhibit would leave the impression that "QM Junction" is in proximity to the aforementioned building. This point is emphasized so that there will be no mistake made in appraising the railway operating distances within the Army Base territory.

346 The Belt Line crews are admitted to the Army Base at the point marked "Chain Gate" on the Exhibit at the upper left-hand section of the sketch.

A large proportion of the cars brought into the Army Base by the Virginian are set off in the "Uptown" Yards, shown near the extreme right of the exhibit. "Uptown" Yards are approximately one mile from Piers 1 and 2, appearing on the left side of the sketch exhibit. A large portion of the cars brought into the Army Base by the Belt Line are set off at Chain Gate Siding, Pier 1 Yard, Pier 2 Yard or Uptown Yard at the direction of the Army Yardmaster.

Crews and power of both the Virginian and the Belt Line, along with crews and power of the Army, operate over the tracks and into and out of the piers and warehouses and storage yard facilities outlined on the sketch exhibit with the exception of those tracks and facilities designated as "Navy Tracks" on the Exhibit, and such other facilities as may be assigned to the Navy operations from time to time.

8 The cars consigned to the Government for Virginian delivery to the Army Base are brought into Sewalls Point yard of the Virginian. The conductor's switch list are prepared from the bills when the train arrives. The bills, in turn, are given to the clerk in the Virginian Agent's office at Sewalls Point yard. The Army and Navy cars are classified and when the next switch crew is prepared to make delivery the cars so classified

347 are picked up and carried through QM Junction to the Army Base Uptown Yards between the QM Junction and Hampton

and from what you know of the practices, that when the *unloading* is accorded, it is actually performed by the railroads through their own employees or agents?

A. Yes.

Q. And that they do not undertake to pay allowances to
378 shippers for performing the service in their own behalf?

A. Yes.

Q. Will you not agree, also, that the unloading service is accorded only on public piers?

A. Yes.

Q. Now, I gather from your testimony, and particularly that part where you point out that the cost of the service is not deducted from the rates before pro-rating. From that I gather that you agree with us that the service is accorded solely by the terminal carriers at the ports?

A. Yes.

Q. Now, that being true, you would agree that a railroad like the Milwaukee, which is shown as the originating carrier of one or more shipments in your exhibits, that the Milwaukee has nothing to do with these port facility practices at Norfolk?

A. Yes.

Q. And the same would be true of certain other originating carriers of some of these shipments, such as the New York Central, the Reading, the Baltimore and Ohio, Lehigh Valley, the Erie, the Soo Line, and others, not one of which reaches Norfolk?

A. Yes.

Q. Wouldn't you be inclined to agree with me that it is at least doubtful whether those railroads are properly defendants in this case?

379 A. There might be a reasonable question there as to whether they should or should not be defendants.

Q. The real defendants are the seven or eight lines that actually serve the Port of Norfolk?

A. Yes, they are the proximate cause of this complaint.

Q. They are the carriers, and the only carriers, that accord the service that the complainant seeks?

A. That is true.

Q. Now, you will also agree, I think, that the export rates do not of themselves include the port services?

A. They are included by inference where the rates apply to ship-side.

Q. All right. Let's take that up a little bit.

In your testimony you refer to shipside rates, and I notice that some of your tariff exhibits, which contain tariff provisions published by certain southern railroads, that there are some references to shipside rates, but with respect to the eastern lines, such as the Pennsylvania, you do not find that those lines publish

Boulevard, at which yards the Navy cars are placed in the Navy Uptown Yard and the Army cars are placed in the Army Uptown Yard. All further movements of Navy cars are made by Navy locomotives from the Navy Uptown Yard.

However, as to the Army cars, the switch engine thereupon proceeds to the Army yard office located at the entrance to Pier 1 storage yard in the Army Base and receives subsequent instructions, if any, with respect to the placement of the Army cars left in the Army Uptown Yard or any other cars that are to be handled by the Virginian switch crew in the Army base. On some occasions when cars arrive at Sewalls Point Yard there are telephone conversations with respect to the delivery of those cars, especially when advance notice has been given that immediate placement of such cars is desired. As to such cars instructions for placement are usually given in advance of initial movement of the cars to the Base.

Q. Have you prepared or caused to be prepared an exhibit for introduction in evidence in this proceeding entitled: "Cars Handled Into and Out of the Army Base, Norfolk, Va. by the Norfolk & Portsmouth Belt Line R.R. and The Virginian Railway Company, Feb. 26 to March 6, 1942, Inclusive?"

A. I have and ask that this Exhibit be marked for identification as Exhibit No. 24.

348 (Defendant's Exhibit No. 24, Witness Bulman, was marked for identification.)

Q. Do you have any comments to make regarding this exhibit?

A. The heading explains the purpose of this exhibit but it will be noted that this exhibit does not undertake to show the number of moves of the cars inside the Base.

Q. Have you prepared or caused to be prepared an Exhibit for introduction in evidence in this proceeding entitled: "Number of Handlings Given Round Trip or Cycle Cars by Railroad and Army Switch Crews Developed from Survey of Cars Handled at the Army Base (Norfolk, Va.) February 26 to March 6, 1952, Inclusive."?

A. I have and ask that this Exhibit be marked for identification as Exhibit No. 25.

(Defendant's Exhibit No. 25, Witness Bulman, was marked for identification.)

Q. Please make whatever comments you deem desirable in connection with this exhibit.

A. Exhibit No. 25 shows the number of handlings given round trip or cycle cars during the period February 26th to March 6th, 1952, inclusive, and also separately shows the number of cars

shipside rates as such, do they? That is to say, their export rates are not shipside rates until you add to them the port terminal tariffs?

A. I would have to examine the tariffs themselves to see whether the definition of shipside is in the trunk line and CFA tariffs, but generally speaking I think your statement is correct.

380 Q. Therefore, you cannot look at the tariffs of the Official Territory lines, publishing the export rates, and determine from them whether any loading or unloading service is granted at the North Atlantic ports?

A. No, you cannot.

Q. Now, if that is true, the export rates of themselves, as published by the Official Lines, are not properly termed shipside rates, are they?

A. Yes, I think they are, because the carrier is obligated to deliver a shipment which is marked for export to a ship at a wharf, or to a pier at which a ship will arrive. And the placement of that car at that point, and the availability of the lading to be taken aboard ship, is the obligation of the delivering terminal line, for which charges are usually published in terminal tariffs which the shipper pays, or which may be allowed to him under an absorption rule.

Q. All right. But even if the export rate tariffs hold out to deliver export freight to vessels, or to steamship terminals, they contain nothing that says the railroad will unload that freight from cars, do they? That is, you can't find that until you add to them the terminal tariffs published by the local port lines?

A. That is correct.

381 Q. Mr. Broz, you no doubt also know that prior to December, 1941, the export rates were not applicable over Army and Navy bases. That is true, isn't it?

A. I will take your word for it. I haven't checked the history of that provision, but I assume your statement is correct. It was a publication by the rail lines by specific application to make such rates applicable at Army and Navy bases and piers.

Q. Which first appeared in the tariffs in December, 1941?

A. I will accept that statement.

Q. You admit that that was a concession on the part of the railroads, do you not?

A. I most emphatically do not.

Q. From your experience on the Pacific Coast, you know that the published export rates to Pacific Coast Ports still do not apply through Army and Navy bases, do you not?

A. I do not know that to be a fact. As a matter of fact, we do get a three cent per hundred export allowance out there on traffic that moves through the Oakland, California, Army Base, which has been granted regularly, only upon proof of exportation.

delivered to or from the Base so as to make the total number of cars, namely 1110, correspond with the number of cars shown on Exhibit No. 24. This Exhibit shows that there were 300 round trip cars of which 213 were Army Cars.

This exhibit also points out that the Army made approximately one-third of the total handlings of the 300 round trip cars.
349 It will be borne in mind that the number of moves by the Army is assumed. This assumption is predicated upon the fact that the last movement by the railroad left the car at a given point and the next time the car was moved by the railroad it was found at another point. It was, therefore, assumed in each such case that the Army made one movement of that car to effect such change in location. In fact, the Army could have made several moves of the car in effecting each such change. Because of actual handling given the car by the railroads, it is calculated in several instances that more than one move was given a car by the Army between handlings by the railroad.

Q. Have you prepared or caused to be prepared an Exhibit for introduction in evidence in this proceeding entitled: "Disposition of Inbound Loaded Shipments Arriving at the Army Base (Norfolk, Va.), February 26 to March 6, 1952, Inclusive"?

A. I have and ask that it be marked for identification as exhibit No. 26.

(Defendant's Exhibit No. 26, Witness Bulman, was marked for identification.)

Q. What comments do you have with respect to this exhibit?

A. Exhibit No. 26 relates to the placement of inbound loaded shipments arriving at the Army Base. The significant fact developed by this Exhibit is that only 4 cars billed to the Army were placed direct to the piers by Railroad crews.

Q. Have you prepared or caused to be prepared an exhibit
350 for introduction in evidence in this proceeding entitled: "Summary of Crew Operations at Army Base (Norfolk, Va.), February 26 to March 6, 1952, Inclusive"?

A. I have and ask that it be marked for identification as Exhibit No. 27.

(Defendant's Exhibit No. 27, Witness Bulman, was marked for identification.)

Q. Please make what comments you have to make regarding this exhibit.

A. Exhibit No. 27 consisting of five sheets, sets forth the Summary of crew operations at the Army Base for the period February 26th to March 6th, 1952, inclusive, with respect to the movements of the 1110 cars shown on Exhibit No. 24. This Exhibit shows that over 22% of the total crew time of about 280 hours

was spent in Army Base switching and that a little over six hours per day were devoted to Army Base switching.

This exhibit also shows that switching service was handled 46 times during the 10-day period or an average of 4.6 trips per day. There were only 33 train crews involved but on several days the same crew made more than one trip to the Base.

Q. Have you prepared or caused to be prepared an exhibit for introduction in evidence in this proceeding entitled: "Statement Showing in Detail Handlings by Railroad Switching Crews of Typical Loaded Cars Delivered at Army Base Norfolk during the Period from February 26 to March 6, 1952"?

351 A. I have and ask that it be marked for identification as Exhibit No. 28.

(Defendant's Exhibit No. 28, Witness Bulman, was marked for identification.)

Q. What comments do you have with respect to this exhibit?

A. This exhibit gives in detail the actual movements accorded the cars shown on the exhibit (which constitute only a portion of the total cars, this exhibit containing only illustrations) within the Army Base. Army shipments are grouped in one portion of this exhibit, Navy shipments as another group, and other shipments as a third group. These sample shipments are selected from cars that made a complete turnaround movement within the Army Base during the period from February 26th to March 6th, 1952, inclusive. If reference is had to the movements outlined for the Army traffic examples will be found of the fact that Army crews and power participated in the handling and placement of cars after the railroads had brought them to the Army Base.

Likewise, by referring to the illustrations covering other traffic a similar situation will be found. Such examples, particularly in the case of other shipments, indicate the inability of the railroads to carry out their obligation to place cars for unloading, a requirement which the railroads cannot fulfill when the Army takes control over their crews and power. The exhibit further illustrates the fact that Navy shipments are not handled by railroad crews
352 or power after arrival at the Army Base.

Q. Do you have any corrections to make with respect to your Exhibit 24?

A. Only two that I can see at the moment, and I believe these will be the only two corrections for the map. The coal track, which is located just east of the fire station or yard office, along the main track just east of that point. They have a storage track over there where they unload the coal.

Q. Coal, c-o-a-l?

A. Coal, c-o-a-l.

There is another—

Q. You can't find that allowance in any tariff, though, can you?

A. It must be provided for by tariff allowance, or the railroads couldn't make it.

Q. Oh, now, you just think about that a little. There is another very obvious means of providing it, isn't there?

A. Oh, yes, you are probably referring to Section 22, but it is not my understanding that applies under Section 22. It may
382 be Quotation No. 265, and if it is, then, of course, it would not be published in a tariff.

Q. You are not suggesting that the published export rates on the Pacific Coast do apply at Army and Navy bases, are you?

A. Yes, they do.

Q. I said "the published rates."

A. The published transcontinental rates in Bureau 29 do apply to Oakland. Those export rates apply to Oakland, California, Army Base, and we do pay those published commercial rates.

Q. Do they apply by any other means than Section 22 Quotations?

A. They apply by the application of the tariff itself, and the transiting for Pacific export traffic is by Quotation 265, in which I think provision is made for the three-cent allowance when export certificates are submitted to the rail lines.

Q. I assume you have heard of the pending Government case seeking the application of export rates on government freight through Pacific Coast ports?

A. Frankly I have not.

Q. You have not?

A. No. I have just been with the Office of Chief of Transportation a short time, and I am not all up on that.

Q. In any event, the usual rule is at all ports that export rates don't apply on freight which leaves the possession of the carrier, isn't that true?

383 A. If the publication on the coast is the same as it is in the east, I would say that is true.

Q. I will restrict that question to the east; that is all I care about there.

A. Yes.

Q. That is true in the east?

A. That is true in the east.

Q. Therefore, wouldn't you assume, then, that the export rates wouldn't apply through Army bases unless the tariff specifically provided, as ours did, for the first time in 1941?

A. Yes, I believe that that was the basis for Quotation 265.

Q. Returning now to Norfolk: The import, coastwise, and inter-coastal rates are still not applicable through Army and Navy bases, are they?

A. They are not.

Q. Excuse me, Mr. Bulman, that is east of the far station? .

A. Yes, that has been changed now to the Propost Marshall's Office, or something else. Mention is made in this summary of crew operations of the Navy lead, they call it 209 or 204. I think in one or two instances the Navy lead is mentioned. That Navy lead, if you will notice it, is right along that circle, or just south of that circle where the Navy lead track enters, and the numbers that the observers have used in this survey are the numbers of the buildings from which those tracks lead.

Exam. DIAMONDSON: That is, 6, 7 or 8?

The WITNESS: It starts at 202, I believe, and goes to 210, something like that.

Exam. DIAMONDSON: I mean, warehouses 6, 7, or 8, serving those three warehouses?

353 The WITNESS: No, sir. They serve the Navy lead warehouses.

Exam. DIAMONDSON: That is not entirely clear. Just where is the Navy lead?

The WITNESS: It is shown on the map, Navy lead.

Exam. DIAMONDSON: The Navy lead is shown in the center of the map?

The WITNESS: On the center of the map.

Exam. DIAMONDSON: Approximately where the word "Fenye" appears?

The WITNESS: That is right. We have designated 202, or 209, once or twice in there.

Exam. DIAMONDSON: Wait a minute, that doesn't help us any. Which one of the leads would 209 be?

The WITNESS: That is 200, 202—

Exam. DIAMONDSON: Wait a minute.

The WITNESS: But they are not all mentioned in here.

Exam. DIAMONDSON: Start right here and call out what it is.

The WITNESS: Commencing from Hampton Boulevard, that is Navy Lead 200, 202 is next; the next one going west is—Mr. Examiner, I am not sure whether they run numerically or every two numbers, I wouldn't be positive about that. We have been over that ground, but I don't believe I would be qualified to say, and I don't believe it makes a great deal of difference. I could tell you definitely in the morning. I have been over there and examined those, and they only appear in this item in two.
354 places, where we have set cars off at the Navy lead and designate a number. That is because the observers show that in their reports.

Exam. DIAMONDSON: You tell us tomorrow when you come back to the stand which of those two leads the log refers to as cars having been set off on.

The WITNESS: I will be glad to do that, sir.

Q. Under what theory, then, can this complain- seek allowances on those three classes of traffic?

A. While we have asked for it on import, coastwise, and inter-coastal, we are not seriously prosecuting that phase of any present shipping program. 98 per cent of our military traffic is export to foreign countries, and if the Commission were to find that we are not entitled to the allowance or the absorption on those three classes of traffic, I don't believe the government would seriously object.

Q. Now, when the railroads made the export rates applicable on freight moving through Army and Navy bases, that did not automatically carry with it the unloading service, did it?

A. The Pacific coast lines publish

Q. No, I am back here.

A. Oh, at Norfolk?

Q. Yes, at North Atlantic Ports.

A. Oh, I get your question now. I would say that publication of the line-haul rates in the tariff on export traffic would carry with them all of the privileges and prerogatives of the terminal tariffs of the carriers who are parties to those line-haul tariffs, and who terminate that traffic.

Q. Well, I think I can accept that. I think your answer means that I am correct in suggesting that the granting of the export rates themselves could not carry with it the concession of unloading, but you add to that that when you look at the terminal tariffs that does add the unloading and wharfage service, isn't that what you have said?

A. That is correct.

Q. Now, Mr. Broz, since you have agreed with me that the export rates, standing alone, do not include the port services, and that the line-haul carriers which make the export rates have no participation in the port services, why did you say that the export rates minus the cost of unloading and wharfage were maximum reasonable rates?

A. I said that for the same reason that the absorption of a switching charge does not lessen the reasonable nature of the line-haul rate.

Q. You would test the reasonableness of export rates apart from the port services, would you not?

A. Yes, I believe that the reasonableness of export rates should be considered and may be considered separate and apart from any accessorial services the carriers may render.

Q. You agree the export rates to Norfolk from the greater part of the origin territory involved in this complaint, are made solely on the Baltimore basis as a competitive measure, and not with respect to any port services at all; isn't that true?

By Mr. MEYER:

Q. Is that all you have in the way of these corrections?

A. That is all in the way of corrections that I know of.

Exam. DIAMONDSON: Do you have any further direct?

Mr. MEYER: The witness is tendered for cross examination.

Exam. DIAMONDSON: You ask that he be temporarily excused and recalled tomorrow?

Mr. KREBILL: Yes, sir.

Exam. DIAMONDSON: All right, you are excused.

(Witness excused.)

355 Mr. COUSINS: Mr. Finley.

JOHN D. FINLEY was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. COUSINS:

Q. Please state your name and occupation.

A. My name is John D. Finley, General Freight Agent, Pennsylvania Railroad, 309 Pennsylvania Station, 30th Street, Philadelphia 4, Pennsylvania.

Q. Is it part of your duties to be familiar with the port practices of the railroads at the North Atlantic ports served by the Pennsylvania?

A. Yes, it is.

Q. Are you familiar with the issues involved in this case?

A. Yes, I am.

Q. Will you please explain in some detail the tariff rules and practices governing loading and unloading carload freight at North Atlantic Ports?

A. The Pennsylvania Railroad serves all of the North Atlantic ports from New York to Norfolk and at those ports the practices of the railroads with respect to water-borne freight, i.e., freight interchanged between railroads and steamship companies, is substantially similar. This is naturally true because these ports are competitive and the export and import freight rates to and from these ports are definitely related. The relationship is based upon the well known port differentials, described by Mr. Hodgkinson, which have been in effect for more than fifty years.

356 One of the so-called port practices is the free loading and unloading of water-borne carload freight, i.e., import, export, inter-coastal and coastwise commerce. This service does not derive from any general rule or custom, but, in fact, is contrary to custom in this country because the railroads do not ordinarily load and unload

A. Yes. The line-haul rates are made on the basis of considerations other than the port services rendered.

Q. And you would agree that by usual standards the principal one of which I suppose is distance, nowadays, the Norfolk export rates are depressed. You may add to that, for competitive reasons, if you desire.

A. I would say they are depressed to the extent they are lower than the Baltimore rates, and distance considered, but I would not say that they are depressed rates per se on military traffic. They may be on commercial traffic, but not on military traffic.

Q. They are depressed when you compare them with the rates to the other North Atlantic ports, are they not?

A. No, they are not, Mr. Cousins, and there are reasons I say that. If you consider the level of the rates themselves per hundred pounds, perhaps yes, the answer is yes, but if you consider their ultimate effect by extending them out on the traffic to which they apply, and the earnings which the carriers earn under them, I would say the answer is no.

Q. They are depressed when compared with the domestic rates to Norfolk; are they not?

A. They are lower than the domestic rates from Trunk Line Territory, yes.

Q. They are depressed when compared with the export rates to Baltimore. You have already admitted that, I think?

A. Yes.

Q. They are depressed when compared with the export rates to New York, are they not?

A. As to the level of the rates per hundred pounds, yet. The answer is yes on all three of those questions only as to the level of the rates per hundred pounds, but not as to the level of the earnings which the carriers earn thereunder, and the proof of the pudding is in the eating. The test of those rates are in what they earn for the railroads.

Q. What you are saying is, as I understand it, that even though the export rates to Norfolk are lower than the rates to the other ports, they still provide reasonable earnings?

A. That is correct, yes.

387 Q. Yes, all right. I think you said that since the free unloading service was instituted at Norfolk in 1920, there had been no substantial change in the level of the export rates.

A. Subject to certain exceptions as to changes in port differentials and the horizontal increases in reductions.

Q. As a matter of fact, there has been no change in port differentials for much longer than that, has there?

A. Yes, I suppose so.

Q. You are agreeing with me?

A. I am agreeing with you.

Q. Yes. Now, was there any change in the export rates at Norfolk when the practice was instituted?

A. Would you read that question again, please?

(Question read.)

The WITNESS: The practice of making the allowance for the loading and unloading was put into effect without any change in the line-haul rates.

By Mr. COUSINS:

Q. When that additional service was accorded, the then existing line-haul rates were not increased?

A. That is correct.

Q. Now, as a matter of fact, you left out in your testimony one important thing in the export rates, haven't you; that is, the one that occurred in 1931, and shortly thereafter, resulting from the eastern class rate case?

A. Yes. I believe that the decision in the eastern class rate case did have an effect on Norfolk rates.

Q. Because assume what new basis of export rates was published, related to Baltimore, to which Norfolk was adjusted?

A. That is correct.

Q. But that was done—that change was made entirely irrespective of these port services, was it not?

A. Oh, yes. In fact, we have had a number of horizontal increases in reductions in the line-haul rates, and no attention was paid to increasing the wharfage and handling rates, except in one of the ex parte cases, which brought it from one cent to one cent and one-quarter, and from three cents to three and three-quarters cents.

Q. Now, wasn't it somewhat of a slip of the tongue when you said yesterday that the export rates were made with this port service in mind?

A. No, I don't think so. I think that is a fair statement. All export rates are made with a view to what the carrier is going to have to do in the way of service, and in negotiation I know that the terminal lines in their conferences with their connecting lines do take into consideration and discuss the question of whether they will or will not absorb terminal charges.

Q. You have already said that when the port services were first rendered in Norfolk, it had no effect on the export rates.

389 A. That is true.

Q. And you have observed that the port practices are different—somewhat different at the various ports—although that doesn't affect the port rate?

A. That is correct.

carload freight. It is also contrary to usual published tariff rules, and the tariffs publishing the line-haul freight rates do not provide for the loading and unloading services.

In order to accord this service it is necessary for the railroads serving a particular port to publish local terminal tariffs defining the port services that will be granted. These local tariffs are strictly the undertaking of the port terminal lines; they are not participated in by the inland line-haul carriers that do not reach the ports, and the latter have no control over the port services.

Technically the local practices are established by stating in the terminal tariffs that the line-haul rates will include loading and unloading, but this is merely a device or fiction to accomplish the purpose as the line-haul rates are not affected in any degree by the port services. The latter can properly be described as free services.

The port lines do not hold out generally in their terminal
357 tariffs to load and unload all water-borne freight, but since this service is an exception to the usual rule, the extent to which the extra concession will be accorded is strictly defined. There are and always have been definite limitations under which the loading and unloading service is accorded and I shall mention them in a moment.

In order to see that the practice is a local one at the ports it is necessary only to examine the terminal tariffs. The language used by the railroads at the various ports is not the same and there are some differences in the practices even though because of competitive influences they are substantially similar.

Q. Has there been any restriction of the loading practice to railroad or other types of piers?

A. One of the principal limitations on the port practices which I shall mention is the restriction of the loading practice to railroad or other public piers, as distinguished from private piers operated by shippers. This limitation suggests the historical reason for performing the service, namely, that the owner of the freight was not able to perform it himself, either because he was not present at the port or because the railroad could not permit him to come on the pier as a matter of convenience. Another reason for the practice was that prior to World War I the railroads and steamship companies joined in issuing through export and import bills of

358 lading, thus establishing through water and rail transportation, and placing upon the carriers the obligation of forwarding the freight through the ports. This is no longer the practice and the Government freight involved in this case does not move on through bills. Another reason for the free unloading was the desire of the railroads to release cars instead of holding them on piers awaiting the arrival of ships.

Q. In a general way explain any qualifications or limitations con-

tained in the tariffs in respect to the loading and unloading practice.

A. When the loading and unloading service is accorded by the terminal tariffs, the railroad handles the freight between the pier and the car; the railroad does not have or does not undertake the obligation of handling the freight between the pier and the ship. There are a number of limitations on the practice:

1. Originally the practice of free loading and unloading was accorded only at the railroad piers for the reason already mentioned, and although the practice has been somewhat expanded at North Atlantic ports, it is still restricted in principle to railroad piers.

By this I mean piers operated by the railroads or steamships, or public piers designated by the railroads in their tariffs to supplement railroad facilities. That the practice is local in character is shown by the fact that at Baltimore it is restricted to railroad piers, and railroads do not accord the service on other public piers. At Wilmington, Delaware and Camden, New Jersey, the practice is limited to public municipal piers. At Philadelphia the tariff provisions are broader, including railroad, steamship and other public piers, but the tariffs specifically exclude "piers controlled by the owners of the traffic."

2. The loading or unloading service is not provided on freight in open cars at piers where they can be placed alongside of ship, as the car is a convenient place for ship's tackle to pick up or lay down the freight. This does not affect the measure of the rate.

3. Generally speaking, bulk freight, lumber, heavy articles exceeding three tons in weight, and liquids moving in tank cars, are not accorded loading and unloading service. The shipper must make their own arrangements and the railroads assume no part of the expense. This does not affect the measure of the rate.

4. To be entitled to this privilege at the ports from Newark, New Jersey, to Hampton Roads, inclusive, the freight must move in road haul service at a minimum rate currently 19¢ per 100 pounds, subject to Ex Parte 175-A.

5. The handling service must actually be performed by the railroads, either through employes or agents, and not by shippers in consideration of an allowance. At most of the North Atlantic ports the tariffs contain merely the obligation to provide the service, with no reference to cost or compensation, as this is unnecessary when the railroad either performs the service with its own employes or contracts with a stevedore to do it. The tariff situation at Norfolk has followed a somewhat different course. Originally the tariffs of the road haul lines serving the port provided for absorption of the charges of the Norfolk & Portsmouth Belt Line Railroad, and somewhat similar language was used when the arrangement was extended to other piers.

Q. And you know as a fact that there are various kinds of export traffic that move on the export rates, but do not receive the terminal services?

A. Yes; that is true. It is a matter of competition.

Q. Yes.

A. Competition between ports, competition between railroads.

Q. Then isn't it substantially correct to say that the export rates are made without consideration of the port practices?

A. Yes, that is a fair statement.

Q. Now, yesterday, you will recall, that you made reference to the exception in the export rule which says that the export rates will apply when a shipper takes delivery at a railroad station at the port, and transports his own freight direct to vessel, and so forth. That is where you told us to hold Part 16, page 1, in one hand, and Part 22, page 4, in the other.

A. I remember that.

Q. I am still holding it. You didn't mean to suggest by reference to that rule that it had any bearing on this case, did you?

A. Oh, yes. That clause was only one of several restrictive clauses in the publication made by the carriers by the Pennsylvania, let us say, in January, 1952, which had not theretofore appeared in its terminal tariff, and it created some grave apprehension on our part that it was making this terminal absorption rule more restrictive than it had been theretofore.

Q. That rule had appeared in the export tariffs for a very long time, had it not?

A. That is true, but the terminal tariffs of the carriers were an exception to that, to the extent of making the absorption or the allowance, and since that is so from a competitive standpoint, and commercial shippers have been enjoying the benefit of that, it seemed to us that putting that same rule in the terminal tariff made it more restrictive.

Q. The Army can take advantage of that rule, if it so desires, can it not?

A. Well, that involves a consideration of a number of changes in the method of operation which I am not prepared to say now that we would undertake.

Q. I am not talking practically—I am not talking about whether it is practical for the Army to do it, but it has the right under the tariffs to take advantage of the rule, like any other shipper.

A. Yes, we have the right to take advantage of that rule the same as any commercial shipper.

391 Q. Of course, if you did, go to a railroad station to get your freight under this rule, you would not get the very privileges you are seeking in this case?

A. That is true. It is hard to conceive of the government going

to a team track and taking delivery of export freight. That is about as broad as I can state the proposition.

Q. Why does the rule bother you, then?

A. The rule bothers me because it is a restrictive publication on a terminal provision which has heretofore been fairly liberal as to commercial shippers, and it appears to me to be the stepping stone to a well-conceived and well-planned, and well-coordinated program to extinguish the tariff allowance and absorption on wharfage and handling charges by all railroads. The allowances which have historically applied to all ports have now come to be an absorption, and the next step from an absorption is a charge, because anything that a carrier may absorb it can charge for, and I am very much afraid that the Army is going to have to pay for the wharfage and handling charges along with all other commercial shippers if the railroads continue this policy of restricted publication in their terminal tariffs.

Q. That is the most encouraging thing you have said yet. You don't regard that rule, then, as an additional privilege that is held out to shippers, but you regard it rather as a limitation of some sort?

A. No. I regard it as a privilege in the same sense that
392 switching is absorbed on competitive traffic. It is a privilege that a shipper may have in addition to paying the line-haul rate, he receives that concession.

Q. You keep using the term "allowances." Didn't you agree with me yesterday that this service did not involve allowances in the usual sense? That is, in the sense of a refund to a shipper?

A. That is correct.

Q. It would be entirely proper to refer to these payments that are made as "compensation" rather than allowances, wouldn't it?

A. Yes, it would. And for the record, I would like to state in one paragraph, if I may, my understanding of the difference between allowances, absorptions, payments, and compensation.

An allowance is something which is deducted from a through rate by way of concession to a shipper for a service performed by the shipper, which the carrier is under obligation to perform.

An absorption is an amount which the carrier itself undertakes to assume out of a line-haul rate for a service which it is obligated to perform under the tariff.

A payment is an amount paid by a railroad to a contracting agent for the rendition of a service which the carrier is ordinarily bound to perform himself under his tariff.

And compensation is the amount which such contractual agent receives from the carriers for the performance of that service.

393 Q. Now, in this case, we are concerned, not with allowances, but with the payments that the railroads make to their

Nevertheless, the payments made to public pier operators at Norfolk are not allowances and should not be so characterized. They are compensation paid by the railroad to the pier operators acting as its agents, and reference to the absorption of $3\frac{3}{4}\text{¢}$ per 100 pounds for loading or unloading is made ~~only~~ to limit the carrier's cost.

6. As already mentioned, the service is restricted to those certain piers which the railroads have designated and is not accorded on freight owned by the pier operator. Incidentally, when the owner moves his freight through his own facility it is usually to obtain some service the railroad or public pier does not perform; or to secure storage at less than the railroad charge.

At Baltimore the greatest part of the water-borne freight is handled over railroad piers, and the practice of providing loading or unloading is confined to railroad piers. In the McCormick Warehouse Case, 191 I.C.C. 727, the Interstate Commerce Commission declined to permit the extension of this loading and unloading to the piers of the Terminal Warehouse Co. in Baltimore. At Philadelphia, as previously stated, the tariff specifically excludes "Piers controlled by the owners of the traffic." As a matter of principle the railroads have excluded from this service freight passing through space leased to shippers or receivers on the piers at Baltimore, Philadelphia, and municipal piers at Camden, New Jersey and Wilmington, Delaware.

Q. Please state when the loading privilege was established at Norfolk and explain its origin.

A. Norfolk came into prominence as a deep-sea port during World War I, but there is no record which indicates that there was any free loading or unloading service at Norfolk until the end of that war. In fact, under Federal control during World War I the import and export rates were suspended by the Government.

From a review of the records it is my belief that the practice of paying 1 cent per 100 pounds wharfage and 3 cents per 100 pounds for loading or unloading at certain Norfolk piers had its inception in efforts to develop or retain traffic after World War I. The 3¢ per 100 pounds handling charge first appeared in a tariff issued by

A. R. King, Port Director, Port Commission of Norfolk, Virginia, viz., A. R. King's I.C.C. No 1, effective November 1, 1920. This tariff was headed "City of Norfolk, Virginia" in large type and in parenthesis "Port Commission of Norfolk, Virginia", below which the words "Municipal Terminals" appeared, and applied on export and outbound coastwise, and import and inbound coastwise freight. Various other charges were shown along with the 3¢ per 100 pounds loading and unloading of freight cars on piers.

These charges subsequently appeared in the Norfolk & Portsmouth Belt Line R.R. tariff I.C.C. 57, effective April 2, 1921, and

the New York Philadelphia & Norfolk R.R tariff I.C.C. 3328, effective April 15, 1921, provided that on export and import freight to or from points beyond Buffalo, Pittsburgh, and other Trunk Line termini the freight rate would include 1¢ for wharfage and 3¢ per 100 pounds for handling, but would not apply on freight in open cars.

Competition with Newport News and other North Atlantic ports was a factor in the establishment of the handling and wharfage compensation, thus making the Municipal Terminal, which embraced the Army Base, competitive for the post-World War I commercial freight.

Q. Please explain further the development and extension of the practice at Norfolk.

A. In 1925 the Pennsylvania Railroad entered into a contract with the Norfolk Tidewater Terminal, then operating the 363 Army Base as a public pier facility, whereby the Terminal acted as agent for the Railroad in providing and operating a railroad facility. The Pennsylvania with no pier of its own in Norfolk desired to provide a service which would be attractive to shippers, and to secure an agent to solicit the movement of waterborne freight via the railroad. In lieu of the usual form of rental, the railroad agreed to pay the Terminal 20¢ per ton on railroad freight moving over the pier.

This payment was termed compensation for wharfage. The railroad also employed the Terminal to load freight to and from cars, and the compensation fixed for this service was 60¢ per ton.

The arrangement with the Tidewater Terminal continued until July 1, 1940, when commercial operation of the Army Base was taken over by the Transport Trading and Terminal Corporation. The latter company, as a public pier operator, was then substituted in the Norfolk port tariff.

The Army took over the Army Base in 1942 for its own purposes.

In early 1947 the Army Base piers were reopened as a commercial operation by the Norfolk Terminal Division of Stevenson and Young Inc. They were added to our tariff (P.R.R. I.C.C. 2613) in Item 305-A, Supplement 76, effective April 5, 1947, coinciding with an agreement executed with the P.R.R. on that date. This agreement is offered as Exhibit 29.

• (The document above referred to was marked Defendant Exhibit No. 29, Witness Finley, for identification.)

364 The compensation paid the various public pier operators was increased from 1¢ to 1¼¢ per 100 pounds for wharfage, and from 3¢ to 3¾¢ per 100 pounds for handling effective September 25, 1948.

agents for performing a service that the railroads hold out to perform?

A. That is correct.

Mr. FISHWICK: May I interrupt? I wonder if I can get him to read the first part of that definition of "allowances." I think he made a slip, referring to the carrier instead of a shipper. I wonder if you might read that.

(Answer read.)

By Mr. COUSINS:

Q. Now will you look at your exhibit, part 8, page 1?

A. I have it.

Q. This is the exhibit on which you rely to show that the Army is entitled to an allowance for wharfage as distinguished from unloading?

A. That is correct.

Q. Is it correct to draw an assumption from this exhibit that the Army Base was in pretty bad shape last May when the Army took over?

A. No. I think that it would perhaps be correct to say that the Army anticipated a rather expanded shipping program through the Maritime Administration terminal, and anticipating the increased volume of traffic certain expansions and additions and betterments were needed. Along with that there was a certain amount of rehabilitation and improvement that had to be made anyway,
394 and would have been made regardless of the shipping program, and the aggregate of all of these factors led to this expenditure that Colonel Weed testified about.

Q. Some of the expenditures were made solely for Army purposes, were they not?

A. I would say not. I think that the expenditures can be said to have been made to enhance the facility of the Maritime Administration terminal.

Q. Why did they make that substantial repair to a bulkhead?

A. Well, that repair is a part of the pier and wharf facility, and it is essential to the proper access for vessels in use as a pier and a wharf.

Q. That is the bulkhead that was changed to accommodate LST?

A. The LST's are a program which I don't believe are covered by the Pier 1 bulkhead. It may be. However, I believe that LST ramp cost quite a bit more money, and is not included in this. It is a part of that three million dollar figure which Colonel Weed has given.

Q. What was all this dredging necessary for?

A. Well, the dredging is for the accommodation of ships of greater

draught, and is a dredging that is not performed normally by the Army Engineers as part of the Army Engineer program.

Q. Would it have been necessary if these facilities had remained as a commercial terminal?

A. I believe that there is a certain amount of dredging that must be done at private piers and public piers in order to keep them properly accommodated to the draught of vessels which are using the wharves, and this is a part of that dredging. I don't believe there is anything unusual in that dredging. There may have been dredging here, Mr. Cousins, to accommodate some of the LST's.

Q. Who would have had to make these repairs if the Army had not taken over?

A. Private enterprise would do some of it. Some of the dredging would have been done by Army Engineers, as a part of their historical program of dredging.

Q. When you say private enterprise, do you mean Stevenson and Young?

A. No, I mean the City of Norfolk, if it had operated these piers as a municipal pier.

Q. No, I am talking about Stevenson and Young.

A. One would hardly expect a terminal operator to embark on such a large capital investment program.

Q. It would have had a long time to wait to get compensated by the railroads at 25 cents a ton, wouldn't it?

A. Yes. I would say as a practical matter, I think the Maritime Administration would have probably arranged by contract to have this work done in the interests of maintaining a facility for which it is primarily responsible, and as a custody and for the government.

Q. Of course, the Army, as I understand, pays no rent?

A. I don't believe it does.

Q. And on the other hand, Stevenson and Young did have to pay rent?

A. That is true, but Army does an awful lot of things that an ordinary tenant does not do in the property.

Q. Yes.

A. So far as management and caretaking and so on is concerned, I think we pay our way. If I understood you correctly, Stevenson and Young pays no rent. I believe Stevenson and Young does pay rent.

Q. Yes, I suggested that it did.

A. Oh yes, thank you.

Q. You don't take the position, do you, that the railroads have any obligation to provide piers?

A. No. In fact, by tariff publication, they indicate to the public

Q. Please explain why the railroads have declined to pay an allowance at the Army Base.

A. When the Army took over the Army Base in 1942 and again in May 1951 for its own purposes and undertook to handle Government freight, the railroads did not extend the unloading privilege to the Army because of the fact that it is a private pier operator like any private shipper who decides to operate his own pier for the advantage and convenience of his own business.

The refusal of the railroads to pay an allowance on Government freight is consistent with their declination to pay allowances to any other shipper at North Atlantic ports. It is my understanding that the public terminal operator is still operating a portion of the Army Base under lease from the Maritime Administration for the purpose of handling commercial shipments. To the extent that this operation is permitted to continue, we will regard the terminal operator as our agent under the contract and will comply with the existing tariff.

We declined to employ the Army as our agent for the reasons that have already been mentioned, to wit, that the handling of water-borne freight on a private pier by the owner of the
365 traffic is beyond any undertaking of the railroads at North Atlantic ports.

Q. In your opinion, how would the principles you have explained be affected if the railroads should accede to the demands made by complainant?

A. The railroads are apprehensive that to accede to the Army's request would destroy the principle under which present restrictions hold the practice within reasonable limits. The railroads are not penalizing the Government, as its freight has always had the same services accorded the freight of commercial shippers when handled over piers in accordance with applicable tariffs.

Wharfage and loading or unloading services would be provided at the Army Base today on Government freight if the Army had not taken over the facility to obtain the advantages of control over its own freight.

There are numerous industries operating private piers at Norfolk and the other North Atlantic ports which could be expected to demand compensation for loading or unloading on the theory advanced in this complaint. The railroads cannot afford to reduce their revenue by assuming the cost of wharfage and loading or unloading which they are not required to provide or perform either on Government piers or other private piers.

To illustrate the situation reference is made to Exhibit 21 of

Witness Hodkinson listing industries located at various North Atlantic ports which have piers served by rail sidings where freight can be, and at times is, handled to and from vessels docked thereat. The railroads do not pay wharfage or loading or unloading costs on freight handled over these piers.

Q. From a tariff standpoint what is the obligation of the railroads to provide pier facilities?

A. The railroads are not obligated to hold and have never held themselves out in their tariffs applying at North Atlantic ports to provide piers where vessels may dock. At some ports the railroads have piers and at other ports they do not. Piers are provided by railroads, steamship companies, municipalities, public terminals, or private concerns only to serve their own interests or welfare of the port.

The Norfolk and Portsmouth Belt Line Railroad, which serves the Army Base, has a tariff provision disclaiming any duty to provide piers. For illustration, Paragraphs (b) and (c) of Item 865 of Norfolk & Portsmouth Belt Line Tariff I.C.C. 105, effective September 22, 1938, and currently in effect, provide as follows:

"(b) * * * as to property which has been transported, or is intended to be transported over its lines, the carrier does not obligate itself to provide wharfage, storage or handling beyond the reasonable capacity of its property and facilities." *

"(c) The carrier does not, under this Tariff, or as amended, hold itself out to be a public wharfinger nor does it guarantee berths for vessels; and vessels reporting for loading or discharge (when berthed) will be berthed at proper piers in their order or priority; the carrier assumes no liability for demurrage to vessels, and all stevedoring (loading or discharge) will be subject to rules or customs of the port of Norfolk."

The pertinency of the above tariff provisions to traffic handled by the railroads which have a proprietary interest in the Norfolk & Portsmouth Belt Line is apparent when considered in the light of the decision of the Commission in Docket No. 4611, where at 44 I.C.C. 460 it is stated—

"In view of these facts and of the exclusive control which the carriers exercise by virtue of their joint stock-ownership and equal representation on the board of directors, we are of opinion and find that the belt line is a part of the line of each of the owning carriers for terminal purposes."

The facts alluded to in the above quotation are lengthy and relate in part to the act of Legislature of Virginia under which the Belt Line was incorporated and the purposes for which it was constructed.

Q. Please explain the application of export rates to the Army Base.

A. Prior to World War II the port rates were not applicable to traffic passing over Army and Navy Bases. With the exception of one complaint brought against the Pennsylvania Railroad in 1915, the Government never sought to have the port rates so applied. United States v. Pennsylvania R. Co., 32 I.C.C. 730.

The reason why the port rates had not been made applicable on traffic consigned to and from Government Bases is entirely consistent with principles governing the application of port rates. It has always been the rule that traffic coming into the possession of the shipper at the port at facilities over which the carrier has no control is not entitled to the port rates, as this breaks the continuity of movement and deprives the traffic of the character of import or export commerce. Thus the withholding of the port rates does not result in different treatment of the government from other shippers but exactly the same treatment.

Traffic consigned to Army and Navy bases is delivered into the possession of the owner and is not delivered directly to the water carrier by the railroad or vice versa. As a matter of fact, it frequently happens that such Government freight is not transported by common carrier steamship companies, but rather is transported by Government vessels or by water carriers under special arrangement with the Government.

If it were not for the fact that the Government has reasons for handling its water-borne traffic differently from commercial shippers, there would be no reason why the Government should not use public piers like other shippers. There is no question but that a private shipper operating his own pier and handling his own traffic in a manner similar to the operation of the Norfolk Army Base today would not be entitled to the port rates.

However, at the beginning of World War II the Secretaries of War and Navy requested the railroads to make the export rates applicable over Army and Navy bases. In December 1941 the tariffs of the East Coast Railroads were amended to make the export rates so applicable. This was distinctly a concession on the part of the railroads for war purposes. It undoubtedly saved the Government millions of dollars in freight rates. The tariff concession was nothing more or less than a special reduction of rates and it served no other war purpose.

It is altogether likely that the Government traffic would have moved in exactly the same manner if the concession had not been made and the only difference would have been that the railroads would have secured more revenue.

This concession involved only the export rates. It did not include import, coastwise, or intercoastal rates and the tariffs have not been

A. Yes, they would be. They would be complex to the point that certain cargo has to be sent via a certain ship to a coded destination, and the coordination of those complex elements requires the expediter to be on the ground.

Q. Of course, any shipper designates the particular ship on which his shipment is to move out, does he not?

A. Generally so. Sometimes he leaves it to the broker, but more often the liaison is such that the shipper knows what ship and what days his shipment is going to be exported.

Q. When he leaves it to the broker, the broker is acting as the shipper's agent, is he not?

A. That is true, yes.

Q. Now, do you consider that there is anything unusual in 412 the matter of railroads providing pier facilities?

A. I don't think there is anything unusual in railroads providing pier facilities, except that it is a step over and beyond their normal transportation functions, and that when they do so, they do so for competitive purposes, and it is very good business to do so. But when they can get the facilities provided for them by a municipal agency, such as a city, or a county, or a port authority, or a state, they would be very foolish not to take advantage of those facilities, but they recognize when they do take advantage of them, they pay for them in some way.

Q. Is there anything unusual in the railroads unloading of carload freight on export traffic?

A. No. The unloading of carload freight on export traffic has been a matter of historical practice and custom.

Q. When you testified then that unloading is an exception to the general rule, what did you have reference to?

A. I had reference to the fact that it is customary for consignees to unload their domestic carload freight at a spur track or a team track, and that it is common practice on such domestic traffic, because the shipper has access. The accessibility is the criterion there. The inaccessibility may be one of the criteria for which railroads have from time immemorial unloaded export traffic.

Q. Do you know whether the charges of local terminal 413 lines are added to the export rates in determining the charges to be billed a shipper? What I have in mind is the accessorial charges.

A. I believe that if the tariff provides that the charges shall be in addition to the line-haul rates, those rates are billed to and paid by the shipper, in addition to the line-haul charge.

Q. Do you know whether that is the practice at Norfolk?

A. No. I believe so far as the Army base piers, or at commercial Norfolk—

Q. At the Army Base piers.

A. ~~As the~~ Army Base piers that is not done, because we have been obliged to contract with Stevenson and Young to perform that service, and the railroads do not perform it for us.

Q. How about on commercial shipments?

A. On commercial shipments I understand that it is the practice for the railroads to submit a freight bill for the charges making an allowance, or an absorption, whichever term you prefer, for the wharfage and the handling.

Q. Do you consider that the level of line-haul export rates are an issue in this proceeding?

A. I most emphatically do not.

Mr. KREBILL: That is all.

Exam. DIAMONDSON: Are there any further questions?

Mr. COUSINS: No.

Mr. MEYER: No.

Exam. DIAMONDSON: You are excused.

414 (Witness excused.)

Mr. KREBILL: I should like to offer Exhibit No. 9 in evidence at this time.

Exam. DIAMONDSON: Is there any objection?

(No response.)

Exam. DIAMONDSON: Exhibit No. 9 is received in evidence.

(Complainant's Exhibit No. 9, Witness Broz, was received in evidence.)

Exam. DIAMONDSON: Does complainant have anything further?

Mr. KREBILL: We still have an exhibit in connection with the tracks and mileages, and it was promised within an hour this morning, but I have not yet received it. But I am sure we will have it some time today, so we can present it.

Exam. DIAMONDSON: All right, defendants may proceed.

Mr. COUSINS: We now tender Mr. Hodkinson for cross examination.

E. A. HODKINSON was previously sworn and testified further as follows:

CROSS EXAMINATION

By Mr. KREBILL:

Q. Mr. Hodkinson, does Rule 27 of the classification apply on export, import, coastwise and intercoastal traffic at Norfolk?

A. I have got to think back what Rule 27 is.

that they do not obligate themselves to provide piers or wharfage facilities.

Q. And you recognize to a very large extent the railroads don't provide the piers that are used in this country for transshipment of export and import freight?

A. I haven't made a study to see the extent to which piers,
397 either privately-owned, publicly-owned, or railroad-owned—
but I believe the number of railroad-owned and operated piers would probably be the smaller percentage of the other classes.

Q. Where the railroads do provide piers, it is a voluntary matter on their part?

A. Well, it is the same thing as building new diesel trains, and expanding passenger service, and everything else. It is keeping up with the times.

Q. It is a little more than that, isn't it? It is providing a facility that is somewhat beyond the railroad obligation?

A. I would say definitely not. If the Chesapeake and Ohio regards its private piers as a concession, or anything else, I think that is the wrong attitude. Taking that as a typical example, it is a selfish effort to control traffic, and I believe that is the way it is done.

Q. Well, whether selfish or not, it is a competitive effort to get traffic, isn't it?

A. I will agree with that.

Q. Yes. Because it would be more correct to describe a pier as a steamship facility, a steamship station, rather than a railroad facility, wouldn't it?

A. No, I would say it is a joint facility. The vessels on one side, the rails on the other, and the cars in the middle.

Q. Does the Army charge the vessels for berthing at its docks?

A. Mr. Cousins, I have to plead ignorance on that point,
398 because of the fact that it is tied up with what is called the MSTS program, and that is a part of transportation that has been taken away from the Office of Chief of Transportation, and I don't know too much about it.

Q. So far as you know, the Army does not make any such charge?

A. The Army itself does not, no.

Q. If it did, some of this expense shown in Part 8 should be charged against vessels rather than entirely against railroads, shouldn't it?

A. Oh, no. I think definitely any of these items that appear here for piers and wharves, are chargeable to the land side of this picture.

Q. Including dredging?

A. Including dredging. It is just a matter of good housekeeping.

Q. Then there is nothing left to charge against the vessels?

A. Except rent, for the use of those facilities.

Q. Look at page 2 of Part 8.

A. Yes, sir.

Q. I gather from that exhibit that the greater part of the costs are computed by measured tons, rather than weight tons?

A. That is correct.

I thought Mr. Farrell testified yesterday that he received his compensation from the Army largely on the weight basis rather than the measured ton basis.

A. I did not so understand him.

399 Q. To what extent have you included the costs in here covering the service performed by Stevenson and Young other than the actual unloading of the cars?

A. Nothing else, other than the labor charge has been included here. This is strictly a labor cost study.

Q. But when Stevenson and Young handles this freight, they do more with it than merely unload the cars?

A. Oh, yes. There are two contracts. There is an unloading contract, and a checking and clerking contract. This might be said to be the unloading contract portion of the contract.

Q. Well, we found out yesterday that when Stevenson and Young unloads freight to ground storage, it moves a great deal of it, because it can't unload it directly to the ground from the car. Is that included?

A. That would be included in the cost, but we are not asking for any unloading allowance on open-top equipment, or anything of that kind. We are asking for it on box car traffic, and there isn't too much box car traffic that moves out into the open storage areas, excepting landing mats, panels, and things like that.

Q. But to the extent that there is such traffic, you can't distinguish between what you pay Stevenson and Young for unloading directly to ground and the removal to the place of rest, can you?

A. No, I don't believe there is any possibility of determining how that cost is apportioned. It is on an hourly basis, or a measurement ton basis, and whichever is the greater is paid.

400 Q. This figure that you arrive at of a cost of \$2.87 a ton does not include the cost of wharfage, does it?

A. It does not.

Q. No. And since Stevenson and Young unloads for the railroads at 75 cents a ton, and for the Army at \$2.87 a ton, according to your exhibit, there would appear to be some difference in the service performed, wouldn't there?

A. That is true. I believe that Stevenson and Young cannot possibly perform unloading for the railroads at 75 cents a ton and make a profit.

Q. Well, that is what all the terminal operators in this port unload for, is it not?

A. Yes, I understand that the Pennsylvania's contract is subject to the terminal costs as published in the tariffs, so far as compensation is concerned.

Q. And the 75 cents is what all other railroads pay, isn't it?

A. That is true.

Mr. COUSINS: Thank you very much.

Exam. DIAMONDSON: When you said that the \$2.87 does not include wharfage, does it also not include handling?

The WITNESS: It includes unloading and handling, sir. It includes the cost of labor necessary to remove the shipments
401 from the cars and place them at a point of rest on the pier in the pier warehouse, or in the other warehouses, or in open field storage.

Exam. DIAMONDSON: Well, the handling I meant was from the point of rest on the pier to the ship.

The WITNESS: Oh, no. No, that doesn't include that.

Exam. DIAMONDSON: Are there any further questions?

Mr. MEYER: I have none, no.

Mr. REYNOLDS: I have two or three.

By Mr. REYNOLDS:

Q. On page 4 of your written testimony, you refer to 75,000 tons of Army export traffic, and estimate that the average loading of that traffic was 15 tons per car.

A. That is a very low estimate.

Q. Do you know the actual average loading of Government export traffic?

A. I think Mr. Reynolds, it runs somewhere between possibly 50,000 and 60,000 pounds per car.

Q. Now, is that a guess on your part, or have you any figures?

A. That is an educated guess, based upon a study which I made of the shipments moving in this particular case, and other government traffic moving for export which moves through our office.

Q. Well now, if the average loading was 25 to 30 tons, why did you base your estimate on page 4 at 15 tons?

A. Oh, I just used that figure. I don't stand on it. I
492 wouldn't want to be bound by it. I merely use that as a method of calculating the number of cars. If you estimate it at 25 tons, the 75,000 tons would result in 3,000 cars. But I know that as to the actual number of cars moved that there were 13,000 cars moved between 1 May and December 31 of last year, and I would rather take the actual figure for the actual number of cars. I was merely pointing out that in three months we had something between 3,000 and 5,000 cars.

Q. Now, on page 13 of your prepared testimony, you estimate that 300,000 tons of Army export traffic will move over the base during a year—is that right?

A. Yes, sir.

Q. Do you know what proportion of that 300,000 tons will move on non-shipside rates?

A. On non-shipside rates?

Q. Yes.

A. I couldn't tell you that. I have no way of even estimating that. I believe that, however, there will be an increased volume over and above that 300,000 tons for the year 1952, and that 1953 and 1954 will be higher.

Q. Well, forget for the moment the 300,000 tons. Have you any idea what proportion of the Army's traffic, export traffic, moves on non-shipside rates?

A. Would you explain for me what you mean by non-shipside, as published in the tariff non-shipside, or is there some special significance that you attach to that term? I am looking for information.

Q. Rates as to which the tariff provides that the wharfage and handling charges shall be in addition to the line-haul rate.

A. Oh, I have not made a study of that, and I wouldn't want to give an estimate, because it involves a determination of certain origin territory which I am not presently able to talk about.

Q. Do you have any idea of what proportion of the Army's export traffic moves under Section 22 Quotations?

A. Not as much as we would like. There is a great deal of Section 22 movement under our transit Section 22 Quotation 16, under which we pay commercial rates, and transit these items intermediate at some storage point to the port. There are also Section 22 rates on single-line export movements. But they are not as numerous as the transited commodities. Then, of course, there is a considerable amount of ammunition which moves, which we are hoping to secure Section 22 rates on.

Q. I have been advising that there has been a Section 22 Quotation published in connection with Rule 34 of the Classification, which provides in substance that the Government shall pay freight based on the size of the car ordered, whatever may be the size of the car used. Do you know whether that is right or not?

A. I have heard of such a quotation in progress. As to whether it has been consummated or not, I couldn't say. But I believe it is highly desirable, because we have run into the situation where we paid for the size of cars furnished.

Q. Do you know whether or not any of the Army's export traffic has moved under that Section 22 quotation which has been made in connection with Rule 34?

A. I could not state positively that I know it to be a fact.

Q. Now, on page 14 of your written testimony you have a Quotation from a tariff of the Pennsylvania Railroad, and a part of that Quotation is: "Wharfage and handling charges will be included in the freight rate when the freight rate from or to Norfolk is 19 cents per one hundred pounds or higher."

A. Yes.

Q. Does any such rule apply for account of the Atlantic Coast Line Railroad or the Seaboard Air Line Railroad?

A. I understand not. The tariffs of the Southern Lines are somewhat different than those of the lines entering Norfolk from the north.

Q. Does any such rule apply on any traffic from the south for the account of any railroad?

A. No, Mr. Reynolds, it does not. That may be one of the reasons that the traffic of the Southern Lines entering Norfolk is only 19½ per cent of the total, whereas the traffic of the northern lines entering Norfolk is 80½ per cent.

Q. You say that may be one of the reasons?

A. Just one of the reasons.

405 Q. Why do you say that?

A. Well, I believe that the competitive nature of traffic is a matter that is taken into consideration by Army procurement officers, because they are coming more and more to the Office of Chief of Transportation to determine what the rates are from competitive points of procurement, and when these questions arise we try to give them the information in the manner that will best suit the government's purposes of economy in transportation.

Q. All right.

A. If it costs more to make a shipment through Norfolk from Atlanta or Memphis, than it does from Schenectady, or some other storage depot in the north, we would prefer to have it move from the north.

Q. Isn't it true that an infinitesimal part, if any part at all, of the traffic received by the Army, at the Army Base—export traffic now—moves under rates lower than 19 cents a hundred pounds?

A. Oh, yes. I think the rates are by far much higher than that.

Q. If that is true, that rule wouldn't have any effect on the movement of the traffic, would it?

A. The minimum rate rule there I don't think is any more than a token restriction on the traffic. I don't think it ever has any practical application.

Mr. REYNOLDS: I don't believe I have any more questions.

By Mr. FISHWICK:

406 Q. On page 22 of your prepared statement: As I understand it, you are saying there that the railroads should pay Stevenson and Young the handling charge, and should pay to the Corps of Engineers a wharfage charge; is that correct?

A. No I think it would be better to state that we would prefer that the handling charge and the wharfage charge be made to Stevenson and Young in order that the accounting which Stevenson and Young would make to us would be for the entire amount of wharfage and handling. I don't believe that we would want to bring the Corps of Engineers into it in any way, if possible.

Q. Now, you say there that the railroads should reimburse the Corps of Engineers at the rate of 25 cents per ton for the wharfage facilities which are presently furnished free to the railroad lines serving the Army Base piers.

Now, is it your theory, then, that the piers are furnished free by whom?

A. They are furnished free by the Maritime Administration, and my statement, Mr. Fishwick, is incorrect there. We don't want the railroads to reimburse the Corps of Engineers. We want them to reimburse Stevenson and Young, our agent. And we say that the Maritime Administration furnishes these piers free to the railroads who serve these ports, or serve this port. That is what I meant.

Q. Well, if the Maritime Administration furnishes the piers free, what is the basis for the Army's claim for wharfage?

407 A. That is the very cause of our complain-, it is because they are furnishing them free that we are complaining here.

Q. You said the Maritime Administration furnishes it free. Under your theory, does the Maritime Administration furnish it free or does the Army?

A. The complainant in this case is the United States Government. We are all a part of the Government. I believe the Army as the lessee of this property has received a trust from the Maritime Administration to make these piers and wharves available to the railroads, just as they would be made available to the railroads by a municipal government, some city, or by some state, and obviously, whoever uses a facility of that kind must feel obligated to reimburse someone for the use of that facility.

Q. That may be, but I am trying to find out what you say, who you say the someone is, is it the Army, the Maritime Administration?

A. Let us say the Army makes the use of the piers and wharves available to the carriers, and the Army does so through permission of the Maritime Administration who is the government custody and have these piers.

Q. On page 24, you say that the Army does not handle this military cargo, and then: "It does not exercise any of the prerogatives

of an owner or a shipper beyond those relating to expediting the movement of the traffic."

408 What do you mean by that. What are the prerogatives of an owner or shipper relating to the expediting of the movement of traffic to which you refer?

A. I am referring to those prerogatives which any shipper has to ask a terminal operator or a broker to give preference to his traffic, or to hold his traffic, or to interfere in any way with its movement through a port. This matter of expediting is a very serious matter with us. And I say expediting, not merely to be using a word, but because that is what we are doing here in this port. A shipment which originates at an Army depot, or at a point of manufacture, and is intended for overseas movement, is scheduled by Army from the time of its procurement to the time it will be ready to move to the port. When it is ready to move to the port, the manufacturer, or the depot advises our port traffic section in Washington, D. C., that this shipment is ready to move, what port shall we send it through, New Orleans, Norfolk, or New York, or possibly San Francisco or Seattle.

The logistics are determined at that time in our office in Washington, and we determine several things: the cost of transportation, inland, from the point of origin to the most available port—most available from an economic standpoint.

Secondly, the demand of the overseas command as to the time when that shipment must be delivered overseas.

409 Third, we consider the availability of the port from the standpoint of how many ships it has, how many are coming in, will it be able to handle that cargo? We put all of those elements together, and we tell the depot or the point of origin, "You may ship to Norfolk." When we do that, it is done with the understanding, and pre-arrangement with the port of Norfolk, Army authorities here, that there will be a ship available to take that out to a coded destination within ten days to two weeks of its arrival at this point. If there is any delay beyond that point we hold it at the point of origin and do not allow it to be shipped.

We regard these five ports of New York, Norfolk, New Orleans, San Francisco and Seattle, as transshipment ports which must be kept in a highly fluid condition at all times. So that when we say expedite, we mean it in its broadest, largest sense, of handling that movement and monitoring it from the time of its production to the time of its delivery overseas, even to the extent of calculating the overseas transportation charges by vessel from the port which we finally select.

Q. Well then, isn't it fair to say that the commercial shipper, when he entrusts his shipment to the railroads for export, while he can ask us to give it prompt handling, we really control that, we can

ship it on whatever train we want to, and can handle it at our own convenience, as long as we handle it with sufficient dispatch, we have fulfilled our duty?

A. That is correct.

Q. Whereas, on the military cargo, you want and require something more. At least when it gets on the pier, you want to be able to tell the man who is handling this cargo for you, you want the privilege of being able to tell him to handle it promptly so that you could make these quick schedules where necessary, so that you can perform this overall-job of expediting the movement of goods from point of origin to point of consumption, for use overseas. That is something more than the ordinary shipper gets; isn't that true?

A. Well, I don't think so, Mr. Fishwick. I think it is a matter of arranging and planning. Any intelligent exporter will arrange through his terminal broker in Norfolk, to allow 15 days, or 10 days, from the time the shipment gets here for the arrival of a shipment. It has to be made in advance, but it can't be made so long as to make a depot out of this base. This base can't be allowed to pile up, except on Blue Jay, and that for a geographical and a climatological reason.

Q. Yes, but you have the right to exercise dominion over this traffic, when it gets down to the piers?

A. We do, but we do not exercise that prerogative in the interest of the Government to the exclusion of the commercial traffic, because we have a time element, and a lead time here which is flexible enough to allow our traffic to funnel through here into the pipeline in the normal channels without getting everybody's hair ruffled.

Mr. FISHWICK: That is all I have.

411 Exam. DIAMONDSON: Do you have any questions, Mr. Krebill?

Mr. KREBILL: I have a few questions, yes.

REDIRECT EXAMINATION

By Mr. KREBILL:

Q. Mr. Broz, any private shipper, shipping through a port, has the right to exercise dominion over his shipment to the extent that he would direct the port operator when to ship out a shipment or whether to hold the shipment?

A. Yes, I believe that is the customary commercial practice.

Q. And by reason of the complex nature of Army supply, both as to points of origin and as to destinations overseas, that the instructions which are required by the Army to the port terminal operator would necessarily be complex, would they not?

Q. I mean the portions which you have copied in your 415 testimony.

A. No, there is an exception on export traffic.

Q. Does the Norfolk and Portsmouth Belt Line Railroad publish accessorial charges for wharfage and handling on freight moving over the Army Base piers at Norfolk?

A. They do publish a tariff. I think it is 6-J.

Q. And that covers those accessorial charges?

A. I think so, yes.

Q. Are these charges in addition to the line-haul rates to and from the port?

A. Under certain circumstances they might be.

Q. Would you explain that a little further?

A. Well, there are certain limitations in the tariff as to rights for example. We have to have a minimum rate before an absorption is made. The traffic has to be of a certain character. No open-top cars, unloaded to open-top piers.

Q. Mr. Hodgkinson, I don't believe you quite got my question. What I had in mind was: Are those charges of the Norfolk and Portsmouth Belt published as an addition to the line-haul rates to and from Norfolk? They are, are they not?

A. I say still under certain circumstances. It would depend upon the nature of the services.

Q. What services do you have in mind?

A. I assume you are talking about loading and unloading and wharfage at the moment.

Q. Yes, that is right.

416 A. They are not always in addition to the rates.

Q. In other words, what you are saying is that the terminal carriers absorb these charges in their line haul rates under the conditions of the tariff?

A. I agree fully with Mr. Broz, so far as the absorption of the wharfage and handling charges are concerned at Norfolk, that they are absorbed by the terminal line, not the line-haul rate, but the terminal line.

Q. It would be the line-haul rates of the terminal line? 5

A. If they are single-line rates. If they are joint rates, with such lines as the Milwaukee, or the Nickel Plate, or the Wabash, then it is not an absorption out of the line-haul rate, as Mr. Broz testified. It is the terminal carrier that absorbs that.

Q. Well, I think we are just talking about the particular carrier that does the absorbing, but so far as the shipper is concerned, it is absorbed in the line-haul rate.

A. Yes, so far as the shipper is concerned, he doesn't have to pay for it, when the tariff provides for the absorption.

Q. Do the terminal carriers absorb the switching charges published by the Belt Line in its tariff?

A. Under the provisions named in their tariffs, they would, yes.

Q. Has the absorption of any of these accessorial charges ever had any effect on the level of the line-haul rates?

A. No.

417 Q. Why not?

A. My testimony has been that the line-haul rates have not generally taken into consideration these terminal services.

Q. In your direct testimony you stated that if so-called free loading and unloading of port freight were abolished, there would be no thought of reducing the port rates because they are the same whether or not such service is performed.

Do you know of any port where such services are performed for some shippers and not for others for the same kind of freight moving over the same piers.

A. Do you mean as of today? Are you talking about domestic freight, or any kind of freight?

Q. I am talking about export freight. Let's take export freight.

A. No, I can't call to mind any exceptions as to export freight, except there are certain classes of freight that are specifically exempted from being exempted from any unloading services in the tariffs. That is heavy material, commodities that are placed in open cars.

Q. I am talking about the same kind of freight for different shippers.

A. No. Wherever the shipper element enters into the picture, there is no difference.

Q. In other words, if it is performed--if the service is performed for one shipper, it is performed for another?

A. Yes, under precisely the same circumstances.

418 Q. You mentioned also in your testimony that there was a variation in the amount of the service performed. Now, the variations that you had in mind were as between different ports or terminals, was it not?

A. Yes, that is true.

Q. In other words, you didn't mean there were variations at any particular port, or any particular terminal?

A. Yes, there may be variations at particular terminals.

Q. What do you mean by that?

A. Well, operating conditions are not quite precisely the same at every pier or every terminal. Thus accessorial expenses might differ at the different piers.

Q. No, I mean at a particular pier.

A. On the same pier you wouldn't have any variation.

Q. Yes.

A. At a port with numerous piers, such as New York, we would have a different pier expense at almost every one of them.

Q. You would have different pier expenses at Norfolk, too, wouldn't you?

A. I assume that you would, yes.

Q. Do the carriers or their agents ordinarily have equipment or facilities to handle the type of traffic mentioned in paragraph 4, on page 4 of your statement, that is, the heavy and bulky articles, fungible goods, and tank car commodities?

A. We are not ordinarily equipped to take care of that
419 type of traffic, or if we are, it is not the type of traffic that we unload as we do the box car freight generally.

Q. I believe that you also referred to open-car traffic, did you not?

A. Yes, sir.

Q. Now, that is ordinarily delivered to shipside within reach of the ships tackle, isn't it?

A. Not always.

Q. Well, the normal practice, though, would be to deliver it at shipside within reach of ship's tackle, wouldn't it?

A. At New York, the railroads do not undertake to unload the heavy freight, from the open-top equipment.

Q. That is what I am getting at. In other words, so far as the open-top equipment, that is ordinarily reached by the ship's tackle, and the stevedores handle that?

A. Yes.

Q. You mentioned that costs of performing port services change from time to time, with no effect on port rates. Are port rates increased from time to time by reason of general increase permitted in ex parte cases?

A. Yes. Not as much as they should be, but they are increased.

Q. You testified that of the ports mentioned, Norfolk is the only one where wharfage is included in the port services. Will you explain that?

A. We have no specific provision for wharfage at any
420 North Atlantic ports, as far as I know.

Q. Would you have any idea as to why you do at Norfolk?

A. I suppose it is one of those historical arrangements that has grown up like Topsy.

Q. You also mentioned service at the Army Base in New York, the Brooklyn Army Base. Do you consider that the Army terminal operations at the Brooklyn Army Base are the same as here at Norfolk, insofar as car and freight handling is concerned?

A. It may not be precisely the same. But they are not too far apart.

Q. Who performs the unloading and loading services at New York—the loading and unloading of cars?

A. On the Army Base?

Q. On the Army Base.

A. I don't know, but it isn't the railroads, and it isn't at the railroad expense.

Q. Do you know whether it is a private terminal operator?

A. Well, the Army Base is on the Bush property.

Q. You are not suggesting that the operations here at Norfolk are similar to those at Brooklyn Army Base, are you?

A. I am not suggesting that they are dissimilar, as a matter of practical application of the tariff rule. We do not make any allowance for unloading at the Army Base in Brooklyn under almost the same physical outlay, at least, as you have down here at Norfolk.

421 Q. You don't make any allowance there to commercial shippers either, at the Army Base at Brooklyn?

A. No, but I understand that we do the unloading for them.

Q. At the Army Base at Brooklyn?

A. Yes. I don't think any commercial shipments move through the Army Base at Brooklyn. It is purely an Army operation.

Q. In connection with Exhibit 12, you called attention particularly to note "A." Does Note "A" apply to import freight delivered to rail carriers from shipside, or vessel dock?

A. Note "A" applies to import traffic that is placed in the warehouse.

Q. In other words, Note "A" applies only to that part of the service which is described below line 21, on Exhibit 12?

A. That is correct, yes.

Q. Is Norfolk mentioned in Exhibit 11?

A. No, I haven't made any mention.

Q. How about Exhibit 14?

A. No. 14 covers Baltimore only.

Q. And your answer would be the same as to 15, 16, 17 —

A. I anticipated you would put in the Norfolk tariff. So that to save duplication, I didn't put it in.

Q. In other words, you have not shown—that is, these exhibits are designed to show what the practices are at other ports?

A. Yes. I relied on you to put in the Norfolk situation,
422 which you did.

Q. Now, in connection with Exhibit 21, I wonder if you could summarize for me the kinds of freight that are handled over the piers of the industries named in that exhibit?

A. Well, wherever there is any reference to the oil companies, that, of course, would be petroleum and its products.

Q. Would that be in bulk?

A. Yes, to a large extent. Sometimes we do a lot of packaging on the pier, and then send it forward.

Q. What about the other industries?

A. There you have the chemical business, you have the lumber.

business, Weyerhaeuser Timber Company, I. T. Williams and Son. They are both lumber.

Q. That would be bulk commodities, wouldn't it?

423 A. Yes. Archer-Daniels-Midland Company handles linseed oil and linseed oil cake and meal.

Q. How are those commodities handled or shipped?

A. Well, linseed oil can be shipped in barrels, and is shipped largely in barrels and drums. Linseed oil cake and meal is shipped in bags.

Q. Is it shipped in tank cars to any extent?

A. Not linseed oil cake and meal.

Q. No, I meant the oil.

A. The oil is, yes.

Q. Are the cake and meal ever shipped in bulk?

A. No.

Q. They are shipped in bags?

A. In bags, yes. There is the Phelps-Dodge Copper Products. They ship non-ferrous metals—copper and brass. That is at New York. Do you want to go on to these other places?

Q. Well, would you say that the other places would be substantially the same?

A. Yes, but it is not exclusively bulk freight. You have some bulk and some package. I will agree that the preponderance is bulk freight, or tank cars.

Q. How much of that type of traffic would you say, if you have any idea, if it were moved over public piers, would be entitled to a handling service or allowance?

A. Perhaps not much.

424 Mr. KREBILL: That is all.

Exam. DIAMONDSON: Any further questions?

REDIRECT EXAMINATION

By Mr. COUSINS:

Q. You don't call lumber a bulk commodity, do you?

A. Well, it is bulk in the sense it is not put up in bags or boxes.

Q. Yes, but it isn't bulk in the sense of the tariff limitation that excludes bulk commodities, is it?

A. Oh, no.

RECROSS EXAMINATION

By Mr. KREBILL:

Q. But it is bulk in the sense that you do not ordinarily perform the handling service on lumber, do you?

A. No, not any more. We used to.

Exam. DIAMONDSON: Are there any further questions?

Mr. COUSINS: Yes, just one more.

REDIRECT EXAMINATION

By Mr. COUSINS:

Q. Is what you just said true as to outbound lumber?

A. We used to make some loading allowance on lumber years ago, but that was eliminated, without any change in the rates.

Q. Wasn't that inbound?

A. That was inbound lumber from coastwise.

Q. Don't you still unload outbound lumber?

A. We still have to unload outbound lumber received by
425 rail, at the New York Harbor ports. We still have to unload that, but on inbound lumber, where we formerly assumed the loading charge onto the cars from the ships, that practice was discontinued without any increase in the rates, without any decrease in the rates.

Q. All right. Now the only thing that bothers me in your answer is you said New York Harbor ports. What you have just said is true of all of the North Atlantic ports, isn't it?

A. All the North Atlantic ports on rail lumber into those points we continue to do the unloading.

Mr. COUSINS: All right. That is all.

The WITNESS: That is particularly true of New York because of the harbor situation there.

Exam. DIAMONDSON: Do you have any further questions?

Mr. KREBILL: Yes, I have one more question in connection with that.

RECROSS EXAMINATION

By Mr. KREBILL:

Q. When you say you are performing the unloading service on lumber, you have reference to the lumber which is shipped in closed cars, haven't you?

A. Yes, shipped in closed cars, to the port, and delivered by a lighter.

Q. But if it is shipped in open cars, you don't perform any handling in that, do you?

A. No.

Exam. DIAMONDSON: You are excused.

426 (Witness excused.)

Mr. COUSINS: May I offer in evidence Mr. Hodkinson's Exhibits Nos. 10 to 22, inclusive?

Exam. DIAMONDSON: Do you have any objection to the receipt of those exhibits, Mr. Krebill?

Mr. KREBILL: No, sir.

Exam. DIAMONDSON: The Exhibits 10 to 22, inclusive, will be received in evidence.

Mr. COUSINS: Thank you.

(Defendant's Exhibits 10 to 22, inclusive, Witness Hodgkinson, were received in evidence.)

Exam. DIAMONDSON: We will take a short recess at this time.

(Recess taken.)

Mr. MEYER: Mr. Examiner, at yesterday's session, Mr. Bulman was asked to make certain additional notations on Exhibit 23, which is the map introduced by him. He made those additions tentatively yesterday, and he is prepared now to confirm them.

R. V. BULMAN resumed the stand and testified further as follows:

The WITNESS: If you will refer to the map and find Hampton Boulevard.

Exam. DIAMONDSON: That is marked Exhibit 23.

The WITNESS: Twenty-three, yes, sir—going westward from Hampton Boulevard, there is a track that leads off from the navy lead. The first track is called "chain track".

427

DIRECT EXAMINATION

By Mr. MEYER:

Q. Is that the northerly track?

A. No, that is the easterly track.

Q. I see.

A. The next one leads to Warehouse 201. The next track is a middle track between Warehouse 201 and 202. It runs right—it is almost in the middle of those warehouses. The next one is to Warehouse 202.

Mr. FISHWICK: Excuse me, are you identifying these tracks in the navy permit area now?

The WITNESS: Yes. I finished with Warehouse 202, I believe, then we come to Warehouse 203. And then you will see a short line on the map, that is to Warehouse 204. The following one is to Warehouse 205, and the next one is Warehouse 201. And the last one is Warehouse 211.

Now, if you will also just above where you see Warehouse 211, you see a track that leads off from that navy lead and makes a circle. It is the outside track to the right on your map, and just

below where it shows yard office, if you will just make a little mark there, it is about, I would say, 150 feet around that track, is what is known as the coal track.

Mr. KREBILL: You referred to the outside track. What you have in mind is the —

The WITNESS: It is the most northerly track there.

Mr. KREBILL: So far as the curve is concerned, it is the inside track, isn't it?

The WITNESS: It is the inside track of the curve, yes, sir.

Now we've discovered after these plans were prepared that the track layout on this map for storage yard No. 1 is not correct, and I put a note on this map to refer to Exhibit No. 3 for detail of connections between storage yard 1 and pier No. 1.

By Mr. MEYER:

Q. May I interrupt you, Mr. Bulman. Is there anything incorrect about the layout of the tracks shown in storage yard No. 1?

A. It is just where they connect. They should extend. I think there are six tracks that extend from the storage yard to the pier. This map doesn't show it. It shows them all coming into one track, and then branching off.

Q. It is a matter of the detail arrangements whereby the tracks shown in storage yard No. 1 are connected with the tracks shown on and adjacent to pier No. 1, and for that detailed arrangement we referred to Exhibit No. 3?

A. Yes.

Mr. MEYER: I tender the witness for cross examination.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION

By Mr. KREBILL: —

Q. On page 3 of your prepared statement you refer to a point marked "chain gate" on your exhibit.

429 A. Yes, sir.

Q. Is that the same gate which is also known as "north gate"?

A. Yes, sir.

Exam. DIAMONDSON: Did you examine the tracks in the uptown yard?

The WITNESS: Yes, sir, I have been over those tracks also.

Exam. DIAMONDSON: Were any of those tracks out of commission, so to speak?

The WITNESS: They are rather rusty, and I assume they are not being used.

Exam. DIAMONDSON: Were you here when the yardmaster testified?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: He called them stand-by tracks.

The WITNESS: Stand-by tracks.

Exam. DIAMONDSON: Were those the tracks you saw?

The WITNESS: Yes.

By Mr. KREBILL:

Q. Does your Exhibit No. 24 include all cars moving into and out of the army base during the period covered by the exhibit?

A. Yes, sir.

Q. And the breakdown as between Army, Navy and commercial, can be obtained by referring to Exhibit 25?

A. Yes, sir.

Q. What conclusion do you draw from Exhibit No. 24?

430 A. No conclusion, except to show the number of cars that were taken into this survey.

Q. Now on Exhibit No. 25; I have had a little bit of difficulty adding up to a 1,110 cars figure.

A. I can explain that, sir. If you will multiply the 300 cars by two, and then add that up to your 1,110, you will get that.

Q. I was wondering if that might be true.

A. That is the answer, yes, sir.

Q. Now let's go across on the first line which refers to Army round-trip cars. There are 213 shown?

A. Yes, sir.

Q. 138 were handled one time: Do you mean that 138 cars were placed directly to the point of unloading?

A. Yes, sir.

Q. You have reference only to the movement by the railroad?

A. That is right.

Q. Now does that one handling—do you count it one handling when you bring it into either the uptown hold yard or the pier one yard?

A. One handling on that, yes, sir.

Q. In other words, when you bring a car in and drop it at either one of those locations, you consider that one handling?

A. One handling, yes, sir.

Q. Now, on the railroad out-bound movement, you have shown 23 cars as being handled twice—two times?

431 A. Yes, sir.

Q. How would you account for two movements on that?

A. Well, some of that would be cars that were loaded outbound, and they required an additional switch, by the railroads.

Q. An additional switch from where?

A. It might be from the pier to the hold yard, and from the hold yard out to the railroad.

Q. Why would it be moved to the hold yard?

A. I can't answer that, Mr. Krebill, why. My reason for making this study was to see what happened to the cars. Why they moved, I couldn't say.

Q. On whose instructions did they move to the hold yard?

A. The instructions for those cars are given by the Army yardmaster to the railroad crews.

Q. Well, when he gives you instructions to move a loaded car out, there wouldn't be any reason for an instruction to take it to a hold yard, would there?

A. I don't know, sir. There would be a possibility of waiting for billing, or something of that kind.

Exam. DIAMONDSON: Let me see if I can understand this a little better. When you refer to a round-trip car, do you refer to an inbound loaded and outbound empty?

The WITNESS: Most of those are inbound loaded, and outbound empty. There are a few of those 213 cars that went out under load.

432 Exam. DIAMONDSON: Can we determine from your Exhibit 25, which were empties and which were loads?

The WITNESS: No, sir.

By Mr. KREBILL:

Q. Well, wouldn't you assume that the movement from the place of loading, or if it were an empty car, wherever it was picked up, the movement from that point to the hold yard, and then a subsequent movement from the hold yard, would be for the railroads' convenience?

A. That is possibly correct, sir.

Q. Now I'm considerably puzzled by the assumed number of Army moves.

A. Assumed minimum number of Army moves.

Q. Assumed minimum number. You have 73 as being moved once. That is because you observed where that car was—the position of that car at one time, and later observed it at a different location?

A. That is right.

Q. So from that you assumed it was moved once?

A. Yes.

Q. How would you assume that 133 cars were moved twice?

A. You would have a car set off in, we'll say, as an example, Pier 1 yard. The next move you get on that car is out of the new track, empty to the belt line. Well, it is assumed that Pier 1 yard, with the exception of track 1, that car would have to move from

433 Pier 1 yard to an unloading point by an army crew, and from the unloading point to the hold yard. That is two army moves.

Q. Now, four cars have an assumed movement of three times. How did you assume that?

A. I would have to look into the detail considerably about that, but I assure you I believe it is there.

Q. I don't think it is very important anyway, so I won't go into that.

Now will you turn to Exhibit No. 26? There, again, we'll take the Army round-trip cars. Four are placed directly to the pier, and five directly to the warehouses. You mean when you bring them in from the outside rails, you place them directly—

A. Directly to either the piers or the warehouses.

Q. With no intermediate move?

A. That is right.

Exam. DIAMONDSON: What do you mean by directly?

The WITNESS: The car came in from either one of the roads, and moved directly to one of the piers. There are four cars that did that in this survey.

Exam. DIAMONDSON: You mean in a continuous move?

The WITNESS: In a continuous move, yes, sir.

By Mr. KREBILL:

Q. Then you indicated that 15 were placed by the railroad crews to the piers, and 38 to the warehouses, in two or more moves?

434 A. That is right, sir.

Q. And 151 were placed short of unloading points by railroad crews. What do you mean by that 151?

A. Well, I mean that that figure represents the number of cars that were placed on storage yards by the railroads and the next record we have of them is moving empty.

Q. Well, do you have a record of them moving again?

A. Yes, sir. We have. This is a continuous movement on all of those 213 cars.

Exam. DIAMONDSON: That movement might have taken place any time between February 26 and March 6, however?

The WITNESS: Yes, sir. I say, I didn't mean a continuous movement, but I mean the 213 cars, we took this information from only those cars that made a cycle, during that period of time.

Exam. DIAMONDSON: During that period of time?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: I'm still not clear on that Exhibit 26. Take the Army round-trip cars.

The WITNESS: Yes, sir.

Exam. DIAMONDSON: You say placed direct by railroad crews to piers, four.

The WITNESS: That is right, sir.

Exam. DIAMONDSON: That was during this period from February 26 to March 6?

The WITNESS: That is right.

435 Exam. DIAMONDSON: Could those cars have been brought in and left in Pier 1 storage yard?

The WITNESS: No, sir.

Exam. DIAMONDSON: And subsequently moved without being unloaded to the pier?

The WITNESS: No, sir. These cars moved direct from the railroad to a pier.

Exam. DIAMONDSON: Now the next one there, placed by railroad crews in two or more moves, 15 to the pier.

The WITNESS: To the piers direct.

Exam. DIAMONDSON: Now one move might have taken place on February 26, and the other move on March 6?

The WITNESS: That is right, sir—no, not March 6, because the study ended on that date, and it would have to come out empty by that night, or by midnight of that night.

Exam. DIAMONDSON: It might have been several days later?

The WITNESS: It might have been several days later, yes, sir.

Exam. DIAMONDSON: Placed short of unloading points by the railroad crews, 151 cars. Does that mean 151 cars were brought into, say, Pier 1 storage yard?

The WITNESS: Yes, sir.

Exam. DIAMONDSON: You didn't consider that the unloading point, and that is why you showed it that way?

436 The WITNESS: Yes, sir. And in some instances, many instances, we would find that car coming out of a pier empty by railroad crews later, so that we assumed that it went to a pier or warehouse later.

Exam. DIAMONDSON: Would your Exhibit 25, on which I asked you whether you could determine from that exhibit whether the cars were loaded or empty, could that be keyed to your logs, beginning with Exhibit 27, to determine that? The same period of time is involved?

The WITNESS: The same period of time. Well, it would be rather hard to say, because for instance we say on the first page placed 15 loads at chain gate siding. Well now, this doesn't designate who those cars were for.

By Mr. KREBILL:

Q. I notice on the other round-trip cars you show that two cars were placed short of unloading points by railroad crews?

A. Yes, sir.

Q. Were you in the room yesterday during the course of the hearing?

A. Yes, sir.

Q. Did you hear the testimony that there was no placing by Army power of commercial cars?

A. Yes, sir.

Q. How would you account for those two cars?

A. Well now, those two other cars were two cars consigned to the Maritime Commission—would you like me to read you the
437 record on it?

Q. Yes, I would like to know what it is.

A. C&O 282514, arrived on March 3 by the Belt Line Railroad—

Q. You don't need to go into the entire record. All I want to know is how was it placed to the unloading point?

A. It was placed at Pier No. 1 yard, Track 6.

Q. Yes.

A. The next record we have of that car is moving from Warehouse 5, Track 5, Door "G", empty, on March 4, by Belt Line locomotive 54.

Q. Well, if the railroad didn't move it and the Army didn't move it, who did move it?

Exam. DIAMONDSON: How did it get over to the warehouse, do you know?

The WITNESS: I couldn't answer that, sir, because we kept a record of every movement by railroad crews, and how that car got from Pier 1 yard to Warehouse 5, Track 5, we have no record of a railroad crew handling it.

Examiner DIAMONDSON: If you have no record, then it must have been moved by an Army engine—?)

The WITNESS: That is my assumption, yes, sir.

Exam. DIAMONDSON: Is that same thing true of the other car?

The WITNESS: Yes, sir.

By Mr. KREBILL:

Q. How did you obtain these records of these movements?

438 A. We had an observer to go with each of the railroad crews.

Q. Was this a special study made for the purpose of this case?

A. Yes, sir.

Q. Is it possible that the checker might have made an error on those two?

A. It is possible. I don't believe it is probable.

Exam. DIAMONDSON: Could we get the information on those two cars from the log? Every move that was made by the Belt and the

Virginian engines is supposed to be represented by those logs, are they not?

The WITNESS: That is right, sir. Well now, we will take—I have the move on the log placing it in Pier 1 yard, Track 6, and I'm sure you will find that on the log. Then the next move I have on the log is from Warehouse 5 at Door "G"; that is on the log. But the question of the move in between, we assume it was made by an Army engine.

Exam. DIAMONDSON: We couldn't determine that from the log actually, because we don't have the car number and the initials, do we?

The WITNESS: Not from the log, no, sir.

Exam. DIAMONDSON: Off the record.

(Discussion off the record.)

Exam. DIAMONDSON: On the record.

Proceed.

439 By Mr. KREBILL:

Q. Will you refer to Exhibit No. 28? I understand that this exhibit covers only certain movements?

A. That is right, sir.

Q. How did you select the particular cars which you show on this exhibit?

A. We just went down at random to pick them out. Some made a short move through there, and some made more moves. We didn't make any distinction.

Q. Well did you —

A. We tried to get some of all of them.

Exam. DIAMONDSON: Do you consider it representative of all the moves?

The WITNESS: Yes, sir.

By Mr. KREBILL:

Q. Did you select any particular car on any particular page number of your records? In other words, like taking the first car of each page?

A. No, sir.

Q. Or did you consider maybe that you would take those on which there were more moves than on others?

A. We didn't attempt to do that.

Exam. DIAMONDSON: Let's take that first one, if you please, on Exhibit 28. Explain that first one, PRR 474001.

The WITNESS: That car arrived at the Army base at 8:05 p.m., on February 27, by Virginian locomotive 446. It was placed on

440 track No. 4 of the old uptown yard at 9:02 p.m., on the same day.

By Mr. KREBILL:

Q. May I interrupt you there just a moment? When you say "placed", you don't mean a car placement there, do you?

A. It is the first move.

Q. You don't mean it as a spotting or placing?

A. I wouldn't like to answer that, sir.

Exam. DIAMONDSON: That is a movement, as I understand it?

The WITNESS: That is a movement, yes, sir.

By Mr. KREBILL:

Q. In other words, that is where the railroad left the car, before it brought it to the base?

A. That is right.

Exam. DIAMONDSON: Do you have any explanation of that difference of an hour in time?

The WITNESS: This car might have been one of the last ones spotted in this particular train. You see, the Virginian crews come in, and as a rule they will set the Navy cars off first. It probably took some time to set his Navy cars off before he got to the point of setting his own cars off.

Exam. DIAMONDSON: In other words, he was holding on to that Army car all the time?

The WITNESS: Yes.

Exam. DIAMONDSON: Now you have the car on Track 4, in the old uptown yard.

441 The WITNESS: Then at 3:41 a.m., on March 1—you see, that is three days later—Engine 460, of the Virginian, carried that car to the back-track in Warehouse No. 1 —

Exam. DIAMONDSON: Now right there, where is the back-track on your Exhibit 23?

The WITNESS: That is the most southerly track on the map. If you look at the warehouses just below Pier 1, it is the most southerly track on the map.

Exam. DIAMONDSON: It is the track marked WH-1 back-track?

The WITNESS: Yes, sir, WH-1 backtrack.

Exam. DIAMONDSON: At 4:16 a.m., on March 1?

The WITNESS: March 1.

Exam. DIAMONDSON: All right. What was the next move?

The WITNESS: Then the next move the railroad has of that car was from Warehouse two and three, middle track; that is, the middle track between Warehouse 2 and 3, at 11:17 a.m., March 4, and

the move to the Virginian Railway at 12:03 p.m., that same day, locomotive 459.

Exam. DIAMONDSON: That car remained on Track 4 in the old uptown yard from 9:02 p.m., February 27, to 3:41 a.m., March 1, is that right?

The WITNESS: That is right, sir. You can see by that railroad record that we were missing one move in there, the move from the back-track, Warehouse 1, to a middle track in Warehouse 2 and 3, we assume to have been made by an Army locomotive.

Exam. DIAMONDSON: Do you have any further questions, 442 Mr. Krebill?

Mr. KREBILL: Yes.

—By Mr. KREBILL:

Q. On Sheet 5, I presume by "Other Cars", you mean commercial cars, or cars of commercial freight, is that right?

A. I can tell you just who- there cars were consigned to, if you want to know.

Q. These particular three.

A. Those particular three, yes, sir. The first car, Southern 20402, was consigned to the U. S. Lines.

Mr. MEYER: What are you referring to now?

Exam. DIAMONDSON: Page 5 of Exhibit 28.

The WITNESS: Page 5 —

Exam. DIAMONDSON: There are three cars listed on page 5 of Exhibit 28, marked "Other Cars".

The WITNESS: ACL 51045, was consigned to the Maritime Administration, and L&N 51566 was consigned to Norton and Ellis.

By Mr. KREBILL:

Q. Norton and Ellis is an export broker, is he not?

A. Yes, I understand so.

Q. That Norton and Ellis car, it was first left on the Pier 2 storage track, is that correct?

A. On Pier 2, track 14, that is right on the pier.

Q. That is right on the pier?

A. Yes, sir.

Q. Would you explain the second move, then?

443 A. Yes, sir. There were two cars, I believe, in our study, that had to be reversed.

Q. What do you mean by "reversed"?

A. The head car had to be pulled out and put to the rear. That, as I understand, we tried to determine why that was done, and I believe, from what I can understand, it was done at the request of the stevedores in unloading it.

Q. In other words, it was taken off of the pier and put back on the pier in a different position?

A. Yes, sir.

Q. Then the next move was from the pier to where?

A. Well, the railroad picked it up at the new track empty. We assume that it moved from Pier 2, Track 14, to the new track by an Army locomotive.

Q. Could that be one of these two that you are referring to here before that you couldn't account for, how it moved?

A. I don't believe you asked me about "other cars" in that.

Q. You remember on Exhibit 26 you had two other cars. That is the bottom line, "Other Round Trip Cars", there were two that were placed short of unloading points by railroad crews?

A. No, sir. I gave you those moves.

Mr. MEYER: Mr. Bulman, aren't those two moves reflected in the first two items on sheet 5 of Exhibit 28—items 1 and 3?

The WITNESS: They are.

Mr. MEYER: Mr. Bulman, I withdraw that question, I see
444 that the two cars that I am referring to on the exhibit here are empties.

The WITNESS: That is not the car. Those cars we are talking about were the C&O car and the GTW car.

By Mr. KREBILL:

Q. This car we are talking about, the L&N 51566, you don't know how it moved from Pier No. 2 to the new track?

A. No, sir.

Mr. KREBILL: That is all I have, thank you.

Mr. MEYER: I would like to offer in evidence Exhibits 23 through
28.

Exam. DIAMONDSON: Is there any objection?

Mr. KREBILL: No objection.

Exam. DIAMONDSON: Exhibits 23 to 28, inclusive, are received in evidence.

(Defendant's Exhibits 23 to 28, Witness Bulman, were received in evidence.)

Mr. MEYER: Mr. Examiner, may I say Exhibit 28 is designed to illustrate the various movements shown in the other exhibits. We can prepare and submit for late filing an exhibit which will give the information contained in Exhibit 28 with respect to every car involved if the Examiner feels it would be helpful to him for us to do so.

Exam. DIAMONDSON: If it wouldn't be too much trouble, I would

like to have an exhibit showing the detail of Exhibit 25, 445 showing whether the car was loaded or empty only. It wouldn't be necessary to show the car number and initial, but if each one of those figures, such as for example, the first line, "Army Round Trip Cars, 138 handled one time inbound" could be broken down into loaded and empty cars, I think it would be more helpful.

We can assume that that particular group of cars were loaded cars handled inbound, but on the very next one, "Railroad movements handled outbound", the witness stated that some of them were loaded cars.

The WITNESS: They were very few, though.

Exam. DIAMONDSON: I can understand that, but if that were broken down into loaded and empty cars, it would also be helpful. Could that be done?

Mr. MEYER: Yes, that could be done, sir. That would be reflected, of course, in an expanded version of Exhibit 28.

Exam. DIAMONDSON: Yes.

Mr. MEYER: This could be —

Exam. DIAMONDSON: It wouldn't be necessary to show car number and initials, but it would be necessary to add a column which would show whether or not they were loaded or empty.

Mr. MEYER: All right, sir, I think we can do that for you.

The WITNESS: We can do that.

Exam. DIAMONDSON: That may be done within twenty days.

Mr. KREBILL: I would like to ask one more question.

446 CROSS EXAMINATION

By Mr. KREBILL:

Q. In connection with this last car we were just talking about, the L&N, 51566, where you assumed that the car was moved from Pier No. 2 to the new track by an Army locomotive; that might have been by a Navy locomotive, could it not?

A. It could have been.

Q. In other words, Track 14, on Pier 2, that is in the Navy location, is it not?

A. Yes, sir. That could have been.

Exam. DIAMONDSON: The point is, however, that it wasn't done by either the Belt or the Virginian?

The WITNESS: That is right, sir.

Mr. KREBILL: What I had in mind is I didn't want to show we did not switch commercial cars and then have it thought that we do.

Exam. DIAMONDSON: Are there any further questions of this witness?

Mr. MEYER: I have none.

Exam. DIAMONDSON: You are excused.

The WITNESS: Thank you, sir.

(Witness excused.)

Exam. DIAMONDSON: Is Mr. Finley ready?

Mr. COUSINS: Yes, sir.

Exam. DIAMONDSON: We will recess at this time until 12:45.

(Whereupon, at 12:20 p.m., Thursday, March 27, 1952, the hearing was recessed to 12:45 p.m. of the same day.)

447

Afternoon Session

Exam. DIAMONDSON: The hearing will be resumed.

Mr. COUSINS: I would like to recall Mr. Finley now.

J. D. FINLEY resumed the stand and testified further as follows:

DIRECT EXAMINATION

By Mr. COUSINS:

Q. Mr. Finley, when you concluded yesterday, your last answer was that there had been movements of large quantities of army freight through the port of New York and lesser quantities through Philadelphia and Baltimore. Do you agree with Mr. Hodgkinson's statement that that army freight at those ports is handled exactly like commercial freight; that is; that it is unloaded by the railroads on public piers, and not unloaded when it moves over army piers?

A. That statement is correct, yes.

Q. I think you have prepared two additional exhibits containing tariff excerpts?

A. That is right. I have an Exhibit No. 30, which is an excerpt—which includes excerpts from Pennsylvania Railroad Tariff ICC 3007, comprising two pages.

Mr. COUSINS: May we number that 30?

Exam. DIAMONDSON: It will be identified as Exhibit 30.

(Defendant's Exhibit No. 30, Witness Finley, marked for identification.)

The WITNESS: And the other one is also a two-page exhibit, comprising statements setting forth the rates and charges of the Norfolk and Portsmouth Belt Line Railroad, in their Tariff ICC 105. Those are pertinent excerpts from the Belt Line tariff which are referred to in my other exhibit.

Exam. DIAMONDSON: That exhibit may be identified as Exhibit No. 31.

(Defendant's Exhibit No. 31, Witness Finley, marked for identification.)

Mr. COUSINS: Mr. Examiner, I offer in evidence this witness' Exhibits 29, 30 and 31.

Exam. DIAMONDSON: Any objection?

Mr. KREBILL: No objection.

Exam. DIAMONDSON: They may be received in evidence.

(Defendant's Exhibits Nos. 29 thru 31, incl., Witness Finley, were received in evidence.)

Mr. COUSINS: Cross examine.

CROSS EXAMINATION

By Mr. KREBILL:

Q. In your testimony you stated it is contrary to usual published tariff rules to provide for loading and unloading service; are you speaking of tariff rules generally?

A. I'm speaking of the fact that, as was brought out earlier today, Rule 27 of the Classification provides that freight will be loaded and unloaded by the shipper or the receiver, and as a basic rule that obtains quite generally in rate tariffs, and any publication of rules governing loading and unloading where the carrier performs the service is the exception of the general rule.

Q. But Rule 27 does not apply on export freight?

A. To the extent these rules provide to the contrary.

Q. You would not say it is unusual for tariffs to provide for loading and unloading services at ports, would you?

A. On export traffic I presume you are referring to?

Q. Yes, sir.

A. That type of a tariff provision is made at North Atlantic ports, but it is very specifically restricted to the extent to which it will apply. It is not a general rule.

Q. Even though the language in the terminal tariffs at different ports is not the same, as you point out in your testimony, there is no difference in the service performed for different shippers when they ship the same kind of traffic over the same piers, is there?

A. Well, the way that you have worded that, with the "same" being emphasized, I presume that would be correct. But, of course, that should be considered in the sense of what is the "same".

Q. You refer to railroad or other public piers as distinguished from private piers. How would you classify the terminal piers at the Army base here?

A. Well, there, again, you have to consider the conditions that exist at the Army base, and to the extent that the Army base is being operated by a pier operator who is handling

commercial freight in the manner that Stevenson and Young is handling and has handled for the railroads, to that extent it constitutes a public pier.

But to the extent that freight may move over it for account of somebody who owns or operates the pier, and has an interest in the freight, then it is not a public pier.

Q. Well, is it your position that the same pier can be both private and public at the same time?

A. The pier physically, yes, but the operation would be different.

Q. Do you know of any other Army base where operations are similar to those here at the Army base in Norfolk?

A. Would you please explain "operations", just how you mean it in this question?

Q. I mean in the handling of military and commercial freight.

A. As far as I know, speaking of the ports which the Pennsylvania serves, there is not an identical situation where the Army base operation also includes a separate operation which handles commercial freight.

Q. It is quite usual to refer to the port facilities here at Norfolk as the Army base, but that does not exactly describe the situation here, does it? In other words, this is not strictly an Army base?

451 A. The term "Army base", as used in that sense, I think has grown to cover a physical layout which may or may not be operated by the Army at a particular time.

Q. In other words, as you indicated awhile ago, it is also a public terminal known as the Maritime Administration terminal, Norfolk Division, Stevenson and Young, isn't that right?

A. There is a commercial operation that makes use of part of the so-called Army base facilities.

Q. And the sign up at the gate says "Maritime Administration Terminus, Norfolk Division, Stevenson and Young", does it not?

A. I saw the sign coming in yesterday.

Q. Is that what the sign said?

A. Approximately. I didn't memorize it. But that sounds pretty close to it.

Q. Handling service is performed by Stevenson and Young on all freight at the Army base, is it not?

A. For account of the railroads? The answer is yes.

Q. It is also performed by Stevenson and Young for the Army, isn't it?

A. I believe that has been testified to here, but I can't answer as to the contractual arrangements.

Q. I believe it's your position that payment to public pier operators is not considered an allowance, but is payment by the railroad for a service performed. Out of what railroad revenue are those payments made?

452 A. Well, any payments that were made would have to be made out of gross operating revenue, I presume, which would be freight charges.

Q. But if it were pinned down any closer than that, it would be logical and proper to be a charge against the line-haul revenue, would it not?

A. In the sense that for a particular shipment the only revenue we receive in the case of the kind where Stevenson and Young, acting as our agent, would unload a car of export freight here, covered by these tariff rules, the only revenue would be the freight charges which you are terming, I believe, as road-haul revenue. There is not any distinguishing characteristics that I am aware of.

Q. In other words, the payment that you would make to your contractor, Stevenson and Young, would normally come out of that road-haul revenue?

A. I think that is correct.

Q. Do you know whether the railroads have been asked to perform the loading and unloading services on military freight at Norfolk?

A. I believe that letters were addressed to the railroads, I believe first by Colonel Gray, and I think subsequently to that, as brought out yesterday, or the day before, by Colonel Smith, that he had also written to the railroads asking for either the service or the allowance, I am not quite clear as to his case, but I do know

453 Colonel Gray had asked for that.

Q. You have referred to the operations of the pier insofar as the Army shipments are concerned as a private pier. Do you consider that the United States Government is engaged in private industry?

A. In the tariff sense in which we are speaking here, I can't draw any line of demarcation that would separate the government from a private shipper insofar as the handling of freight is concerned at the terminal.

Q. But I think you would agree with me that the functions of the government are of a public nature?

A. Basically I think that is quite true.

Q. Do you think, or is there any possibility of the railroads being called upon to defend themselves for granting rebates or concessions to the government, even if they were granted?

A. Well, I don't know that there is any restriction that would operate against the railroads publishing or by quotation of Section 22 providing the government with such rates or charges as were deemed to be appropriate.

At the same time, I don't know that the question of rebating would enter any more so in the handling of commercial freight to the extent that we now provide for these terminal services that are in issue here.

Q. I understand, though, that you are fearful that if you performed this service at a private pier, that you might be
454 accused of doing that?

A. To the extent that we didn't perform it equally at all private piers.

Exam. DIAMONDSON: No, to the extent that your line-haul obligation ended short of the pier.

The WITNESS: I'll accept that correction, sir.

Exam. DIAMONDSON: I didn't mean that in the sense of a correction, Mr. Witness. I just wanted to find out if that is what you meant.

The WITNESS: I did mean that in the sense that that brings into the question the factor as to where a carriers' obligation in delivering freight terminates, and, of course, that question as applied to industries or applied to other private operations immediately raises the point as to where the carriers' obligation to deliver a car stops.

By Mr. KREBILL:

Q. Do you think there is danger of a precedent being established which would affect strictly private piers?

A. Well, the best answer I can give to that is, I believe, that the Pennsylvania Railroad, at least, and I assume other railroads, that are in similar position serving ports, where there are private pier operators, have been under a certain amount of pressure for quite a long time to extend the unloading or loading privilege to private piers, and to that extent I would say any change which was made would serve to aggravate those requests.

Q. You have referred to Exhibit No. 21. Can you state
455 generally the kinds of freight that are handled over the piers named in that exhibit?

A. I believe that the types of freight would include not only bulk freight, freight such as lumber, but also a substantial part, a substantial portion of package freight which would not differ from that handled over commercial piers, or public piers. As to a breakdown, I couldn't attempt to give you the percentage of the one versus the other.

Q. Well, could you give us any idea as to how much it might be?

A. No, I have no way of estimating whether it would be ten percent or ninety percent, one way or the other.

Q. Do you think that export rates and services should not apply to government traffic which is exported?

A. That is a rather broad way of stating the question, I believe. The answer I can give to you best on that, I believe, is that prior to 1941 the government freight which was handled through government bases was not accorded the export rates. However, at no time

within recent years, certainly, has the government been prevented from handling their freight the same as commercial shippers do over public piers or railroad piers, and at the same time receiving the same services and the same rates that are accorded to commercial shippers.

Q. Well, from your testimony I get the idea that you consider it a concession to grant export rates to the government?

A. If you are referring to the tariff publication which provides for the application of export rates for government freight moving through government bases; that is, Army or Navy bases, I think without question that is a concession.

Q. Well, in what respect does that differ from other places where export rates apply to? What is the difference between an Army and Navy base by which you would distinguish it from the application of the export rates?

A. Well, the application of export rates on commercial freight is certainly tied in very specifically with a basic condition that the carrier or the carriers' agents retain control of the traffic up to the time it is delivered to the steamship line for export. That situation is not true on traffic for the government, which is delivered to an Army base or a Navy base, where the carrier relinquishes control of the freight at that point, and for any change that is made, that would amount to a concession.

Q. Why do you consider it necessary that that traffic remain in the control of the carriers?

A. I think that the answer to that is that when the traffic does not remain in the control of the carriers it is no longer identifiable as export freight. Export freight in many instances is given a lower level of rates than normally applies to domestic traffic, and that there must be some definition or basis by which one class of freight can be distinguished from the other, in one instance being
457 accorded a lower rate, in the other instance accorded a higher rate.

Q. But before the exports rates are applied, you require a certification of exportation, do you not?

A. That is correct. Under the conditions in the tariff where that is asked for, on freight that is turned over at a seaport station to be delivered by the owner of the freight to a steamship line. Where the carrier retains control, the proof of exportation is in its own hands.

Q. You have mentioned other Army and Navy bases in your testimony. Do you know whether there is any commercial freight moving over any of those other Army or Navy—through these other Army or Navy bases?

A. At the ports that the Pennsylvania serves, the only other bases I believe are in the New York Harbor, and as far as I know,

there is no commercial freight handled over them. But that is expressed as an opinion, not from actual close-hand knowledge.

Q. Well, you do not mean to imply then, by your testimony, that the situation at other Army and Navy bases, to which you refer, is the same as it is here at Norfolk?

A. The term "situation", that you use, I think requires clarification.

Q. What I have in mind is that here at Norfolk there is a public terminal, which is the same terminal used by the Army, by the Army base.

458 A. The so-called public terminal at Norfolk that you refer to, I do not consider to be the same terminal as the portion of that same physical property which is operated as an army base.

459 Q. Well, isn't it all the same property?

A. It may be all inside of the same fence, but that doesn't mean it is the same property in the sense of the operation.

Stevenson and Young is an agent of the Pennsylvania Railroad, for one, and other railroads in Norfolk, to do certain work for us. It may be Stevenson and Young is an agent for the Army to do certain work for it. But the two services are not identical, and coincidentally may be performed by the same contractor, but that doesn't mean that the single operation exists.

Q. Well, there is no division of the piers, is there?

A. You mean as to parts of the piers?

Q. Yes.

A. Other than was shown in the maps which have been submitted earlier in the case, I believe principally by witnesses for your side, I can't answer that question. I do know that Stevenson and Young, representing the Pennsylvania Railroad, has the use of certain parts, either fixed or variable, of this property, and that they perform a service for the Pennsylvania Railroad on freight which we bring in here or take out from here.

Now, whether that section can be identified at all times, in as clear a way as the maps show, I do not know.

Q. Well, so far as the loading or unloading of cars at the pier, would there be any difference in the unloading of a car of
460 military freight than there is in the unloading of a car of commercial freight.

A. Physically, you mean?

Q. Physically.

A. I can conceive they would be virtually identical under certain conditions, and I can also conceive of cases where the work being performed for one party or the other might go somewhat beyond the other person's.

Q. The Pennsylvania Railroad does perform wharfage and han-

dling services at the piers, at the Army base, in connection with commercial freight, does it not?

A. Through our agent, yes.

Mr. KREBILL: That is all.

REDIRECT EXAMINATION

By Mr. COUSINS:

Q. Mr. Finley, what is the basic reason for export rates, lower than domestic rates?

A. I think that the basic reason back of the establishment of export rates lower than domestic rates, at one time at least, was to take into consideration the overall cost of transportation from a domestic origin to a foreign destination, or in the reverse, from a foreign origin to a domestic destination.

I think that that principle has probably been affected in some measure by the condition of competition which has grown up between various ports, both close at hand along the North Atlantic

Seaboard, and also perhaps with similar ports in other sections of the country.

Q. In your opinion, do the reasons of competition apply to Government freight?

A. In my opinion, there is no competition in the handling of Government freight in the sense that competition exists on commercial freight.

Q. In your opinion, is there any reason to accord the Government export rates for the same purposes of stimulating business as exists in connection with commercial freight?

A. No, there is not.

Q. In your opinion, is there any difference between the term "export freight", as it may be understood by a layman, or defined in a dictionary, and "export freight", as it is designed in the tariffs?

A. I am not sure that I understand the definition of your question. A layman thinks of export freight, for example, as freight that might be moving to Canada or Mexico, while in the sense that we are talking about it in the tariffs here, it is freight destined to certain foreign countries, which exclude countries such as Mexico and Canada, and moving by water beyond the ports.

Q. And it is also defined in other ways, is it not, in the tariffs?

A. That is correct.

Q. The tariffs make it clear that all freight that is exported is not necessarily the kind of export freight accorded the rates?

462 A. That is very true. The application of export rates is limited in many ways, or in a number of ways, in the tariff, which precluded their use on many kinds of freight that are leaving the United States.

Q. Now, referring to rule 27 of the classification: is there any restriction at all as to what type of freight it refers to?

A. The classification rule is not restricted.

Q. It applies to export and import freight, doesn't it?

A. That is right.

Q. Or domestic, or any other kind you can think of?

A. That is correct.

Q. And what you said was that you have to look elsewhere to find an exception?

A. That is correct. I said it applied to export freight only to the extent exceptions were provided for it.

Q. Now, as to the payments made to our agent for the port services: Is there any way that the railroad can identify what revenue those payments come out of?

A. In the sense of taking a particular 100 dollars, and say they come out of that, I would say not. They come out of gross freight revenue.

Q. In railroad accounting, they are not related to the revenue paid on the particular movement at all, are they?

A. Not specifically.

463 Q. Are they accounted for any differently than the wages you pay the engineman that hauled the freight?

A. Not as far as I know.

Mr. COUSINS: That is all.

Exam. DIAMONDSON: Any further questions?

Mr. FISHWICK: May I ask this?

I didn't catch one thing you said, so let me ask this to see whether you did cover it.

REDIRECT EXAMINATION

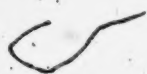
By Mr. FISHWICK:

Q. Is it true one of the reasons for export rates is to permit American producers to compete in foreign markets with foreign producers?

A. I didn't say exactly that. I said that in the establishment of export rates, an underlying reason was the consideration of the overall cost of a shipment moving from a point in the United States to a destination in a foreign country, or in the reverse direction. I don't know whether that answers the question the way you asked it or not.

Q. How would you answer the question I asked?

A. I would say yes, that is correct.



RE CROSS EXAMINATION

By Mr. KREBILL:

Q. Are certain of the commodity and exception rates fixed by reason of competition?

A. I believe, taking freight rates as a whole, and speaking again of the territory that we serve as being representative, that a
464 great many rates today reflect in substantial measure competition of one kind or another.

Exam. DIAMONDSON: More particularly, commodity rates?

The WITNESS: I would say both commodity and exception rates.

By Mr. KREBILL:

Q. Would you say that the Government was involved in that competition?

A. Well, the competition I am referring to is principally competition with other forms of transportation, and the Government does not perform transportation in the sense I am talking about.

Q. Wouldn't you feel that some of those rates were also affected by competition between shippers?

A. In the establishment of rates, certainly consideration is given to competitive factors as between shippers or receivers, or markets.

Q. But you would not feel that the Government is involved in that sort of competition?

A. You mean as a shippers, is that what you are suggesting?

Q. As a shipper.

A. Well, I think that in most cases, where there is any question of that sort present, that it is recognized in the establishment of rates, they use section 22 quotations, rather than specific publication of rates and tariffs.

Q. You wouldn't suggest for the reasons you have given, whereby you believe that the Government traffic, government export traffic, receives a concession, if the same export rates are applied
465 to it as applied on commercial freight, would also apply on domestic freight?

A. Well, when you talk about a concession, I consider that as something in which I as an individual, or the railroad I represent as a company, can grant or may not grant as it chooses. It is an option that we have, in which we have the full control. We are not required to make a concession. I don't consider it a concession when we have to do it. I don't exactly follow your question, if I am not answering it directly there.

Q. Well, you wouldn't take the position that as to any domestic movement, a different rate should be applied, a higher rate, or a lower rate should be applied on Government traffic merely because it is Government traffic?

A. Well, in the establishment of domestic rates, there are a number of factors involved, several of which I mentioned in answer to your recent questions, and I don't think that Government freight would be treated any differently from other freight, in the domestic field.

Q. That is why I don't understand why you feel that export rates granted to the Government is a concession to the Government.

A. Well, the answer to that is that it is a concession for the reason that until the latter part of 1941 export rates did not apply on government freight which went for export, in the sense 466 of leaving the country, but which was not handled in the same way as commercial freight on which export rates are accorded, and I am referring specifically again to the sort of terminal through which it moved, and the conditions under which it moved.

At no time that I know about has the export rate been refused to a government shipment that moved over a public pier or a railroad pier, and remained in the control of the carrier or the carrier's agent up to the time it moved out in a vessel.

Mr. COUSINS: Except during World War I.

The WITNESS: That is a little before my time, as far as working in rates is concerned. It is true, however, that during a part of World War I the Government, the USRA, I believe it was, in General Order 28, suspended the application of export and import rates.

By Mr. KREBILL:

Q. I notice in your testimony you say obviously the government is not engaged in business like the American manufacturers, and thus there is no similar need, and no advantage to the railroads for providing export rates on government traffic.

It seems to me that your basis there is entirely because the Government is not engaged in business like an American manufacturer. Is that the basis?

A. Well, that is not the basis. The railroads, I think quite generally, are in business to earn money.

467 Q. So if they can get more from the Government, they will get it?

A. I would like to finish that sentence I was starting.

To earn money—and that if the level of rates on which the traffic moves is at a reasonable level, and conforms in other ways with the Interstate Commerce Act, that any concession which the railroads may choose to make, or may choose not to make, are completely within their own judgment, and in our judgment there is no reason for us to make a concession of the sort which this complaint is seeking. We can not see the comparison—I can not see the comparison of the Government and a private shipper in the sense in which you asked that question.

Q. Well in exercising your judgment, you do have to bear in mind the question of just and reasonable rates and practices, don't you?

A. That is correct, to the extent that the Interstate Commerce Act requires it, certainly. We feel that that has been done.

Mr. KREBILL: That is all.

Mr. COUSINS: That is all of this witness.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

Mr. FISHWICK: Mr. Keeley.

C. F. KEELEY was sworn and testified as follows:

DIRECT EXAMINATION

468 By Mr. FISHWICK:

Q. Please state your name, residence and occupation?

A. C. F. Keeley, Roanoke, Virginia. I am freight traffic manager of the Norfolk and Western Railway Company.

Q. Mr. Keeley, are you familiar with the practices of the railroad in performing wharfage and handling services on export, import, coastwise, and intercoastal freight, at the Port of Norfolk?

A. Yes, and in addition, I am reasonably familiar with the practices of the carriers with respect to that operation at other north Atlantic ports and south Atlantic Gulf ports.

Q. Would you please very briefly review the history of the practices of the Norfolk and Western in particular, and the other Norfolk carriers in general, with respect to performing those services at Norfolk?

A. We have been in the export and import business at Norfolk for a long time. Probably as far back as 1892. I recently undertook to determine about when we went into the export and import business, and I did find that certain publications had been made that had to do with the handling of waterborne traffic over our facilities at Lambert Point as far back as 1892.

Now, among other things, I found that at that early date we and the Chesapeake & Ohio observed the Baltimore basis of rates from Hampton Roads, and when I say that, I mean both Norfolk and Newport News, to a certain portion of Central Territory.

469 So I think it is probably correct to say we have been in the business pretty nearly as long as I am of years ago, don't you see? That is not so few.

Now, for many years, up until the very recent past, we performed our own terminal service at our Lambert Point piers. We later

bought the piers at Sewell's Point, including the grain elevator, known as the Municipal Terminals, and we operated them ourselves for quite a while.

Now, for various and sundry reasons, within the more or less recent past, we employed a contractor to go out on those piers and do our work for us just as we would do if we were there ourselves. That contractor is Lambert Point docks, Incorporated. So far as I am undertaking to answer with respect to our own piers. Do you want me to cover other piers at this time?

Q. Yes.

Will you explain what services the Norfolk and Western, and the other railroads, perform on the piers that are now served by the Norfolk Division of Stevenson and Young?

A. Well, in 1920, following the first World War, the City of Norfolk leased this Army base where we are right now. A little bit later, maybe a year or so later, they embarked on this program of building the municipal terminals at Sewells Point. That consisted of wharves and a grain elevator.

Well, The City of Norfolk, in the terminal business, there got to be a lot of competition between terminals to attract ships to
470 them, and we employed others, other terminals to do the work for us. The present contract, so far as this terminal is concerned, our present contractor is Stevenson and Young. Stevenson and Young acts not only for us, but also for all of the other line-haul carriers that serve the Port of Norfolk.

Q. As I understand the situation, shortly after the last World War, World War I, as a result of the—about the time the city of Norfolk went into the terminal business, the Norfolk and Western, and other railroads, extended their terminal facilities to piers which were not then owned by them, by opening up their own piers, to other railroads, and extending their own railroads by switching rights?

A. Yes.

Q. To other piers?

A. That is correct. And that was an exception to the practice that usually prevails at other North Atlantic Ports, and to a great extent at the South Atlantic and Gulf ports.

A. As I say, among the terminals, a great deal of competition ensued to attract ships to them. Now, no waterside terminal is going to do any business unless the ships are there, primarily. When and because of the entrance of the City of Norfolk into the terminal business, there ensued more or less a rate raise all over the terminals in Hampton Roads. They wanted to be placed in position to compete for the ships that came to Hampton Roads. And it was
471 on account of that that we employed private owners of terminals which subsequently became public terminals to act for us.

Q. Well now, let me interrupt you there. As I understand it, as a result of this competitive situation, the piers in Norfolk became public piers and served all the railroads, and the railroads performed a service which they undertook in their tariffs to perform through these terminal operators who acted as agents for all the railroads, is that correct?

A. Yes. Now, examples of those terminals are these: The Imperial Docks, over on the Norfolk and Southern, at Berkeley, owned and operated by the Imperial Tobacco Company. We made a contract with them to perform terminal service for us, as a contractor, standing in our place, and doing what we would do if we were there to do it.

Merchants Contracting Corporation, on our Atlantic City branch in Norfolk here. And the Norfolk Tidewater Terminals, on the Portsmouth side of the river.

Now, these terminals privately owned, which became public terminals, were also made accessible to roads other than those on which they were located. For example, the Imperial Docks, as I said before, is located on the Norfolk and Southern. That terminal was opened up to switching by all of the Norfolk roads, and I don't say this to be the chronology of the thing, but all the terminals in Norfolk, including the Lambert Point, and Sewell's Point terminals, were all opened up to include the other line-haul carriers

472 who came into Norfolk.

Q. Now, Mr. Keeley, I have here a copy of an exhibit which the Examiner has given the number 32, headed, "Statement Showing Basis For Absorption of Wharfage, Handling and Terminal Charges, at Terminals in Norfolk, Virginia, as Published in Norfolk and Western Railway Company Tariff GF-No. 23-F, ICC No. 9179."

Do you have a copy of that?

A. Yes.

Q. Was that exhibit prepared under your supervision and direction?

A. Yes.

Q. Is it true and correct to the best of your knowledge and belief?

A. Yes.

Q. Would you briefly tell us what that exhibit shows, Mr. Keeley?

A. ~~The first section is the present~~ absorption rule in our tariff, known as Section 6, which became effective September 15, 1948, and on which we say that on freight which we handle either inbound and outbound beyond the switching limits of Norfolk—or in other words, where we are a road-haul line—that we will absorb the wharfage and handling charges specifically published in tariffs lawfully on file with the Interstate Commerce Commission, and

473 the State Corporation Commission of Virginia.

Now, following that, where the words "territorial applica-

tion," are underlined, we undertake to differentiate between the several territories of origin and destination. In order to properly understand that, I should say that the Norfolk is a hybrid port in this respect. We compete with the lines serving the other North Atlantic ports for traffic to and from Eastern, Western, Transcontinental Territories, and so on, and then in addition, we compete with Southern lines having their own rails into Norfolk, as for example the Southern Railway, and the Seaboard, and the Atlantic Coastline, for traffic to and from the South.

Now, those two groups of roads follow radically different practices with respect to wharfage and handling charges. I think I ought to say before I go into that too deeply, that primarily, and fundamentally, it is the obligation of the man who owns the freight to load and unload his freight. Those two things are the reasons why carload rates are less, or lower than l.c.l., or any quantity rates.

Q. Let me interrupt you there, Mr. Keeley.

Isn't it true that all of the railroads serving Norfolk, to the extent that they commit themselves to perform wharfage and handling, actually perform it, either themselves or through their agents, and they do not make any allowance to anybody for performing that service for them?

474 A. Yes, I am going to elaborate on that if I may a little bit later.

Q. Yes. Let me at this point ask you to refer to page 20 of Mr. Broz's testimony.

A. Yes.

Q. I want to read the first sentence of that, and ask you to comment on it. Mr. Broz says:

"Formerly, where the allowance of 1 cent for wharfage and three cents for handling was published in the tariffs, that allowance per one hundred pounds was granted off the line-haul rates to the shippers' representatives, the terminal operator. The shipper made his own arrangements with the terminal operator at the port for shipside delivery. Thus, the shipper would have the terminal operator unload the car and use the wharf facilities and the railroads would grant him an allowance of four cents, now five cents, for this extra expense, but it was the shipper's responsibility to arrange with the terminal operators to provide the service of unloading the car and moving the shipments to shipside."

Now, would you comment upon that testimony?

A. I would like to say in advance that I have no intention of being deliberately insulting to Mr. Broz, but the statement is abso-

lutely incorrect. In the first place, it is not an allowance. It is money we pay a contractor to do for us what we would do
475 if we were in the place and doing it. And it is not granted off the line-haul rates, it is bona fide operating expense, just as much as we pay an engineer and a fireman to operate one of our engines, or a switchman to handle our cars in the yards. The shipper doesn't make that arrangement with the terminal operator. The terminal operator does that work for us, and we make the arrangements with him.

I don't mean to leave the impression that the shipper may not try to expedite his shipment in one way or another, but I mean fundamentally he is not the man that makes the arrangement with the terminal operator for the handling of his shipment. We line-haul carriers do that.

Q. Well now, has that same situation existed both prior to and after 1948, when our tariffs were amended to exclude any reference to these contractors and what allowance or payments we made to them?

A. Yes, but the tariff was not amended for that purpose.

Q. Yes.

Now, will you explain—I think I will ask you to refer now to the section under TAB "F", which shows the Norfolk and Western Railway tariffs. That is part 14?

A. Yes.

Q. Do you have that, Mr. Keeley?

A. I am going to have it here in a minute. Yes, I have it.

Q. If you will look on page 3, under the heading of Section 1,—I am sorry, on page 2, under the heading rule 37.
476

A. Yes.

Q. There is a reference to an amendment of that rule on September 15, 1948, and on several pages over under the heading Section 6, there is a reference to an amendment to that rule on the same day.

A. Yes.

Q. Will you explain what took place at that time, and why you made those changes in the tariff?

A. Yes. For a long time we labored under the impression that these payments to the terminal operators were things that we ought to publish in our tariff.

Now actually, we were wrong about that, because what we have published in our tariffs is anything that either increases or decreases the value of the freight rate to the man who pays it.

So, in June, 1948, we received a letter from Mr. Chapdlaine, Chief, Section of Tariffs, of the Interstate Commerce Commission, and by the courtesy of one of my railroad colleagues, whose office

is in Norfolk, I am enabled now to quote from the letter that Mr. Chapdlaine wrote us.

"It is our position that these particular allowances are not proper subjects of tariff publication, and that they should be eliminated from the tariff. You agreed with this position"—

477 you agreed with this position and stated that steps would be taken to eliminate these allowances from your tariff.

Now, prior to that time, and back to the very first day that we ever employed a contractor to come on our terminals and do our work for us, we had a contract with those terminal operators. Obviously, we had to have a contract; because the question of legal liability for damage to the freight, for injuries to persons, and just a myriad of other things, had to be covered by a contract, and even though we published the allowances in the tariff, they were covered back to the first date by a contract with the terminal operator.

So when we made this publication here, we eliminated the rule that said that we would make an allowance to the terminal operator, and we substituted for that the first part, the first paragraph on page 1 of exhibit 32, which simply says, and by the way I wrote this provision myself, which simply says: on line-haul freight that comes from beyond, or goes beyond the switching limits of Norfolk, that we will take care of in our freight rates the charges for doing the terminal service. I say we have contracts with all of the terminal operators, and that is going to appear a little bit later in this exhibit here.

Q. Well now, Mr. Keeley, is it correct to say that this change in the tariff that occurred September 15, 1948, was a change which you made to comply with the wishes of the Interstate Commerce
478 Commission, and which did not in any way change the practices of the Norfolk and Western with respect to providing wharfage and handling?

A. Yes.

Q. You simply took it out of the tariff, and let the contractor cover it, is that correct?

A. Yes. I think the short way to say it is it was a change in form, and not in substance.

Q. Well now, Mr. Keeley —

A. I hadn't finished my explanation of this territorial application on this exhibit here.

Q. All right, will you do that now?

A. Now, in this territorial application, we define the territory where the wharfage and handling charges are included in the freight rates, either in part or in whole. Now, certain territory in the States of Virginia, and West Virginia; although it is within Eastern

Territory, technically speaking, is not subject to the same kinds of competition as other Eastern Territories are subject to, and therefore, we don't absorb as much of the wharfage and handling charges as we would to New York, for example.

The proper way to describe it would be that the Chesapeake and Ohio has a slightly different policy, and to the extent that they force us to do so, we absorb the wharfage and handling charges in toto to the common points where they absorb it, and at other
479 points in the States of Virginia and West Virginia; in Eastern Territory, we add wharfage and handling charges.

Now, although this Territorial application doesn't show it, there is another very important territory that is covered by our terminal tariffs, and that is the Southern territory. I said something about that a little bit ago. Generally speaking, from and to southern Territory, and except where competition has forced the Southern Lines to publish shipside rate, as for example from New Orleans to Chicago, in competition with Baltimore to Chicago, the practice of the Southern Lines is generally to add the wharfage and handling charges.

Exam. DIAMONDSON: Do they publish them separately?

The WITNESS: Yes. We have in our tariff GF-23—I wish I had enough copies of it to pass them around, but I will be glad to show it to you, Mr. Examiner.

Exam. DIAMONDSON: You just refer to the tariff.

The WITNESS: Yes, in our tariff GF-23, we publish in Section 4, starting on page 15, and extending through page 24, in part, wharfage and handling charges applicable on Southern Territory traffic.

Now, prior to the ex parte increases, the usual wharfage and handling charge on Southern Territory traffic was 22 cents wharfage and 88 cents handling. Now, the wharfage and handling charges
480 at ports Hampton Roads, and South, were not increased under the ex parte increases, for the obvious reasons since wharfage was absorbed at the North Atlantic ports and added at the South Atlantic ports, that the overall cost, via the South Atlantic ports was increased that much more which they put out of competition with the lines serving the North Atlantic ports.

By Mr. FISHWICK:

Q. Mr. Keeley, I have here a copy of an exhibit which has been numbered for identification, No. 33, which is headed, "An Agreement Between Norfolk Terminals Division of Stevenson and Young, and Norfolk and Western Railway Company."

A. Yes.

Q. I might explain that this is the same contract which was introduced by Mr. Broz in his exhibit, but it contains the map which

was not attached to his exhibit, and we want to introduce it at this time so we will have the complete picture. Mr. Keeley, was this a copy of the agreement prepared under your supervision from the original copy which is in the files of the Norfolk and Western Railway Company?

A. Yes.

Q. Is it true and correct to the best of your knowledge and belief?

A. Yes.

Exam. DIAMONDSON: That exhibit has been identified as exhibit No. 33.

481 The WITNESS: Yes, sir.

Mr. FISHWICK: Yes, sir. I would like to offer exhibit 33, and tender the witness.

Exam. DIAMONDSON: Just restate that a little bit. Don't offer the exhibit until after cross examination.

Mr. FISHWICK: All right.

By Mr. FISHWICK:

Q. Mr. Keeley, do you have anything further to add?

A. Yes. Throughout Mr. Broz's testimony, there ran the thought that allowance —

Mr. KREBILL: I object to this witness generalizing what Mr. Broz's testimony was.

The testimony will speak for itself.

The WITNESS: All right.

Mr. KREBILL: But I do not wish to have this witness attempt to summarize what the testimony was.

The WITNESS: Well, we will refer then to a particular page.— page 20, at the bottom of the page; also—well; that is enough of it. Page 20 at the bottom of the page, about an allowance, an allowance being made to the shippers' representative, or to the shipper for wharfage and handling.

Now, at no time, and at no place, have we ever paid a shipper wharfage and handling charges for handling his own freight. One of the examples here is the Imperial Tobacco Company, with which company we have a contract. Now, the Imperial Tobacco Company is a representative of the British monopoly that handles all
482 tobacco and cigarettes that are consumed in the British commonwealth.

Now, we have a contract with the Imperial docks for the handling of certain export and import traffic, but specifically in that contract we say that we will not pay them one single solitary nickel for any of their own freight that they handle over that terminal.

By Mr. FISHWICK:

Q. There is a similar provision in the Stevenson and Young, is there not?

A. Yes. We will go right back here to this exhibit No. 33, and that has a provision in it that Stevenson and Young should handle over the Army Base any business belonging to themselves, that they won't pay them any wharfage and handling charges. And that goes back to the fundamental difference between carload and less carload freight where the shipper, or the owner of the freight, has to load and unload his traffic because the carload rates are less than the l.c.l. rates.

Now, at the waterfront terminals we don't allow every Tom, Dick and Harry to come in there and congest the place and do his own handling. Some of it is done down in New Orleans, but I have heard that has gotten to the point of being almost a public scandal, I don't answer for that.

Anyway, we don't permit them to come on our terminals to handle the freight, so it is therefore on our terminals, or a terminal they operate for us, they handle their own freight—like the 483 Army is doing here—then they are doing no more, no less, than they would do if this was a piece of domestic freight that originated at Suffolk, Virginia, which is not on any navigable water.

Mr. FISHWICK: The witness is submitted for cross examination.
Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION

By Mr. KREBILL:

Q. Refer to page 20 of Mr. Broz's testimony that you have just been testifying about. I believe that there is a difference there in the statement which Mr. Broz made than in the statement which you attribute him having made.

Let me read the statement as it appears in the record.

"Formerly, where the allowance of one cent for wharfage and three cents for handling was published in the Belt Railway Tariff, the allowance per 100 pounds was granted off the line-haul rates to the shipper's representative, the terminal operator. The shipper made his own arrangements with the terminal operator at the port for shipside delivery. Thus, the shipper would have the terminal operator unload the car and use the wharf facilities, and the railroads would grant the terminal operator an allowance of four cents, now five cents, for this extra expense. But it was the shipper's responsibility to arrange

with the terminal operator to provide the service of unloading the car and moving the shipment to shipside."

484 Now, the comments which you made, I understood, to apply to the present practice, is that right?

A. To the practice before the present, and the present also.

Mr. FISHWICK: May I interrupt there?

We have a different reading of the extract than you.

The WITNESS: Yes, we have.

Mr. FISHWICK: I have those changes you made with the exception of when you said, "And the railroads would grant him", and you struck that out and put in the terminal operator. That I did not have, and it doesn't seem to fit in with an allowance of four cents for this extra expense.

The WITNESS: That is what I had.

Mr. FISHWICK: I endeavored to make all the corrections that you made yesterday, but I did not have the terminal operator in place of that last "him". I don't think the terminal operator makes sense there.

That may be the cause of the confusion.

Mr. KREBILL: The reason this does make sense —

Exam. DIAMONDSON: That is not in the copy of the exhibit that has been received in the record.

Mr. KREBILL: I beg your pardon.

Exam. DIAMONDSON: The word is "him" instead of the terminal operator, in the copy received in the record.

Mr. FISHWICK: Terminal operator just doesn't make sense 485 there.

Mr. KREBILL: The statement refers to both the shipper and the terminal operator, and the word "him" could apply to either one. It is meant to apply to the terminal operator. That is consistent with the tariff provision, the tariff provision provides that the allowance will be made to the terminal operator.

Mr. FISHWICK: Well now, let me make this explanation: we took that so that it could not apply to the terminal operator, because it referred to extra expense. The only extra expense would have been to the shipper. So far as the terminal operator was concerned, he couldn't have gotten anything for it unless it was paid to him by the railroad.

Mr. KREBILL: Well, I will not engage in argument with counsel.

By Mr. KREBILL:

Q. I merely am asking the witness if he recognizes this statement which I have read as being the former practice, while the practice which the witness describes in his testimony is the present practice?

A. I think, and I am not trying to be evasive, I hope you give

me credit for that—I think there is not one iota of difference between the practice today and what it was before we amended this rule effective September 15, 1948.

Now, as I tell you, I was responsible for the wording of that ruling, and I was responsible for the change that was made after the Interstate Commerce Commission suggested we were doing it
486 in a backhanded sort of a way.

Now, I again repeat, with as much emphasis as I can put on it, that the change was one of form, and not of substance.

Q. We will accept that, if that is your interpretation of what the effect of the tariff change was.

A. Yes.

Mr. FISHWICK: May I ask whether you would like to change the word "him" to "the terminal operator."

Exam. DIAMONDSON: At this point, I think I ought to clarify myself a little bit.

The exhibit, exhibit No. 9 that has been received in the record was amended in many respects which witness Broz at the time he tendered that exhibit, and I couldn't say personally at this time whether or not that word is "him" or whether he actually read that in as a correction at the time he was making these amendments to that exhibit. It is completely possible in the record, in the transcript, it is "terminal operator," instead of "him."

Off the record.

(Discussion held off the record.)

Exam. DIAMONDSON: On the record.

Mr. KREBILL: If in the prepared statement by Mr. Broz, on page 20, the second line from the bottom, the word "him" is shown, it should be "the terminal operator". In other words, the second line
would read:

487 "The terminal operator an allowance of four cents, now five cents, for this extra".

By Mr. KREBILL:

Q. Mr. Keeley, in connection with the map, which is attached to your exhibit No. 33, is it your position that this map correctly shows all of the rail lines on the portion of the Army Base which is reproduced?

A. It was not intended to do that. We simply intended to show on this map the portions of the Army base at which Stevenson and Young would act as our contractor.

That is within the red lines, you see.

Q. In other words, where the rail line between warehouse No. 3 and No. 4 narrows down to one track, you don't intend that to be the correct showing?

A. That is right. I don't say it is, I don't say it isn't. I mean it is not the purpose of this print.

Q. Yes.

A. To show that.

Exam. DIAMONDSON: That correction was actually made by witness Bulman. Were you present at the time?

The WITNESS: Yes, and I accept that as being correct, because he knows more about it than I would any day.

By Mr. KREBILL:

Q. Well, the witness does not wish to rely on these rail lines. I have no further objection to that.

In connection with the service which Stevenson and Young performs here, as a terminal operator, is some of that commercial
488 freight coming into the base stored in any warehouse?

A. I don't know. So far as we are concerned, as a rail carrier, we would be interested only in pier storage. That is storage within the red line area there on the pier.

Now, anything that Stevenson and Young do in these back warehouses, right where we are sitting now, is something he does not for us, but for himself. :

Q. If any of this inbound, this export traffic, commercial traffic, were stored by Stevenson and Young, in either warehouse 1, 2, 3, 4, or 5, and was later moved to the pier, and there unloaded from the car to the pier floor, would you make a payment to Stevenson and Young for that service?

A. For the service of moving —

Q. For the unloading service?

A. For service of moving from the warehouse?

Q. No, for the service of unloading the car to the pier floor.

A. The simplest way to answer that would be, we would pay Stevenson and Young for one service of wharfage and handling.

Exam. DIAMONDSON: Are there any further questions?

REDIRECT EXAMINATION

By Mr. FISHWICK:

Q. Mr. Keeley, if any of the commercial shipments should move from a back warehouse to the pier, it would move in a railroad car, would it not?

A. Not necessarily. Sometimes it is moved by a trailer or tractor or one of these lowboys they tell us about around here. the
489 last couple of days. I have not seen one yet.

Exam. DIAMONDSON: Is a lowboy a flatbed?

The WITNESS: I don't know. I will find out before I leave here.
Mr. FISHWICK: That is all I have.

RECROSS EXAMINATION

By Mr. KREBILL:

Q. If it were moved on a low-boy, or a truck to the pier, would you grant it one handling and one wharfage allowance?

A. Yes, on the theory had the car moved directly to the piers, and there be unloaded, we would have paid him one wharfage and handling.

Q. Yes, sir.

A. Now, we are talking about commercial freight, not Army freight.

Mr. KREBILL: That is right.

Exam. DIAMONDSON: So that if Stevenson and Young unload a commercial car into a warehouse, and subsequently moves it to a pier, the Norfolk and Western, through its agent, would only pay one wharfage and handling allowance.

The WITNESS: That is right.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

Mr. FISHWICK: Mr. Examiner, I offer exhibits 32 and 33 in evidence.

Exam. DIAMONDSON: Is there any objection?

490 Mr. KREBILL: No objection.

Exam. DIAMONDSON: Exhibits 32 and 33 are received in evidence.

(Defendant's Exhibits Nos. 32 and 33, Witness Keeley, were received in evidence.)

Mr. KREBILL: I wish to recall Colonel Marphis.

LT. COL. JOSEPH C. MARPHIS resumed the stand, testifying further as follows:

DIRECT EXAMINATION

By Mr. KREBILL:

Q. Colonel Marphis, you testified earlier in this proceeding, did you not, concerning railway track data?

A. Yes, I did.

Q. You understood at the time when you gave the prior testimony that there was a great rush for this information, and therefore

compiled the figures which you gave in your previous testimony under rather adverse circumstances, didn't you?

A. Yes, sir, that was my understanding, and that is how it was prepared.

Q. Now since you have given your prior testimony, have you learned that some of the track data which you gave was not entirely accurate?

A. I have.

Q. And have you since caused to be prepared an exhibit showing the location of various tracks as they appear on the drawing
491 which is exhibit No. 3, showing the number of tracks and the miles of trackage, and also certain distances between certain points on the Army Base?

A. I have.

Mr. KREBILL: Mr. Examiner, I wish that this exhibit be identified as exhibit No. 34.

Exam. DIAMONDSON: It will be identified as exhibit No. 34.

(Complainant's Exhibit No. 34, Witness Marphis, was marked for identification.)

By Mr. KREBILL:

Q. Is this exhibit correct to the best of your knowledge?

A. It is correct to the best of my knowledge, yes, sir.

Mr. KREBILL: That is all I have.

Exam. DIAMONDSON: Cross-examine.

Mr. REYNOLDS: I would like to ask one question.

CROSS EXAMINATION

By Mr. REYNOLDS:

Q. How far is it from QM Junction to the bulkhead of piers 1 and 2?

A. I think you will find that on this exhibit, which will be distributed, and I might add, Mr. Examiner, sir, I would like that the previous information I had given regarding the distances, because of the error I discovered, be disregarded, and this information be substituted therefor.

Exam. DIAMONDSON: Can you answer the question specifically?

By Mr. REYNOLDS:

Q. Is it or is it not on the exhibit?

A. It is, sir.

492 Q. I don't see it. That is why I asked the question.

Mr. KREBILL: It is down on the last five lines of the exhibit, on the bottom. By combining several of those items you get

the distance. In other words, you will see that the distance from the "hold yard", east of Hampton Boulevard, to pier No. 1, is 1.25 miles. Then the distance from the hold yard east of Hampton Boulevard, to QM Junction, is 1.53 miles. By adding those two figures, you will get the distance from QM Junction to Pier No. 1.

Mr. REYNOLDS: At the beginning of the pier?

The WITNESS: That is to the entrance to the pier.

Mr. KREBILL: The witness says that is the entrance to the pier.

Mr. REYNOLDS: Says what?

Mr. KREBILL: To the entrance of the pier.

Exam. DIAMONDSON: Are there further questions?

You are excused.

The WITNESS: Thank you, sir.

(Witness excused.)

Mr. KREBILL: I offer this exhibit No. 34 in evidence.

Exam. DIAMONDSON: Exhibit No. 34 is received.

(Complainant's Exhibit No. 34, Witness Marphis, was received in evidence.)

Mr. MEYER: Mr. Examiner, before the next witness goes on, I should like to state I have agreed with Mr. Krebill for the submission in evidence of a photostatic copy of the contract of the Virginian with the Norfolk Terminals Division of Stevenson and Young, dated the first of July, 1949. If that is acceptable to you, I would like to offer that at this time.

Exam. DIAMONDSON: Is that contract presently in effect?

Mr. MEYER: It is, sir.

Exam. DIAMONDSON: That will be identified as exhibit No. 35 and received in evidence.

(Defendant's Exhibit No. 35, Counsel Meyer, was marked for identification.)

(Defendant's Exhibit No. 35, Counsel Meyer, was received in evidence.)

Mr. REYNOLDS: May we have a little recess.

Exam. DIAMONDSON: Yes, we will take a short recess.

(Short recess taken.)

494 E. C. HICKS, JR. was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. REYNOLDS:

Q. Please state for the record your name, address and occupation.

A. My name is E. C. Hicks, Jr.; address, Atlantic Coast Line Railroad, Wilmington, North Carolina.

I am assistant freight traffic manager of the Atlantic Coast Line Railroad.

Q. Outline briefly your traffic experience, please.

A. My traffic experience extends over a period of slightly more than 33 years. The last 26 of those years have been with the Atlantic Coast Line Railroad, in various capacities, in the freight traffic department.

For the past eight or ten years, maybe more, I have been specializing, among other things, in the handling of matters pertaining to export and import freight, and port terminal practices and charges.

Q. I beg your pardon?

A. Practices and charges.

Q. Are you familiar with the issues in the present case, Mr. Hicks?

A. Reasonably so; yes, sir.

Q. With what particular traffic, that is, from and to what particular section of the country will it be your purpose to deal?

495 A. That, to and from points in the southern territory.

Q. Do the tariffs publishing export rates from southern territory to Norfolk provide that such rates are applicable on traffic consigned to the United States Government, and handled through Army bases, Navy bases, or Navy Yards?

A. Yes, they do. That is illustrated by the application of the export tariff, the principal export tariff, 705-J, as set forth in Exhibit 36. I call particular attention to paragraph 5 which states that the rates apply as you have just inquired.

Mr. REYNOLDS: Mr. Examiner, Mr. Hicks' exhibits have been identified off the record, I believe, and the numbers he will refer to are the numbers of the exhibits as they have been identified off the record.

By Mr. REYNOLDS:

Q. Are the provisions of this tariff, ICC No. 1254, the same as the provisions of agent Hoke's tariffs, ICC No. 712, and 903?

A. With respect to this feature you mentioned just now?

Q. Yes.

A. Substantially the same. Since the time the tariffs you men-

tioned were in effect there has been a slight change or modification in this paragraph 5, also in paragraph 4, to the extent that formerly the tariffs required that proof of exportation be given to entitle freight handled through Army bases, Navy Yards, and so on, to the export rates, and now it is required by tariff that this proof of exportation be given within 60 days of the date of delivery of the freight to the United States Government.

496 Q. What is generally meant by the term "applicable to shipside," used in connection with export rates from southern points to Norfolk and ports south thereof?

A. When we say in the tariffs that the rates apply to shipside at our ports, it is meant that in addition to the line-haul transportation service, we provide for wharfage and the handling or unloading service of the freight with certain exceptions, of, course. We don't apply that even though the rate states it applies to shipside; there are some exceptions that I will mention later.

Q. Are all export rates from the south to Norfolk and other southern ports so published as to apply to shipside?

A. No, I would like to call attention to Exhibit 37, which is an excerpt from this same export tariff applying from the south to Norfolk and southern ports, which shows that so far as Hampton Roads, or Virginia ports are concerned, rates published in this tariff do not apply to shipside unless otherwise specifically provided in individual rate items.

A comparatively small number of the rate items in that tariff state that those rates in those items apply to shipside.

Q. In other words, so far as rates from the south are concerned, it is the exception rather than the rule that the rates apply to shipside; is that correct?

497 A. Yes.

Q. Even if export rates in agent Spaninger's southern export tariffs are designated as applying to shipside, do they include wharfage and handling, or unloading service in all cases?

A. No. If you will refer to Exhibit 37, you will see that immediately following the paragraph I just read, the statement is made that when export rates apply to shipside rail lines will perform the service or assume the cost of the switching, wharfage, and one handling, or unloading service, except as otherwise provided in Items 168 through 180, or in individual rate items.

I have reproduced in this same exhibit three or four of the items embraced in that group 168 through 180, and which set forth some of the instances in which wharfage and handling services are not performed by the railroads even though the rates are published as applying to shipside.

For example, if the shipments is in bulk, or if there is direct transfer of freight from open-top cars, or there is tank car freight, or as

stated in Item 70, paragraph C, which is the part of the item that applies at the Virginia ports, if the freight consists of pieces or packages weighing 5000 pounds or more, per piece or package, in those instances the export rate, even though published as applying to shipside, does not include the unloading service.

498 Q. What is the policy of the railroads of the south with respect to giving shipside application to export and import rates dependent upon the dock, wharf, or pier over which the freight is handled?

A. The policy of the southern roads in that respect is to give shipside application to these rates only when movement is over piers operated by the railroads themselves, or over piers operated by terminal operators with whom the railroads have arrangements or contracts. We do not give shipside application to rates on traffic moved over private terminals, or over terminals operated by the owners of the freight. It should be readily apparent that the railroads in the movement of freight over terminals not operated by the railroads themselves could not give shipside application, or obligate themselves to unload that freight moving over the piers of every Tom, Dick and Harry, because when they obligate themselves to unload this freight, if they can't do it themselves on their own piers, they have to employ someone to do it for them, and to do it, or to have somebody do it, without first making some arrangement or agreement or contract with them, would be tantamount to writing a blank check.

You don't know what that man would charge you for doing that service.

Q. Does what you have said answer the question why the railroads withhold shipside applications from export or import rates on freight handled over private terminals?

499

A. Yes, I think that would cover that.

Q. Now, dealing with southern ports south of Norfolk, have you a list of the docks, wharves, or piers, over which export and import rates apply, but over which such rates do not have shipside application even though designated in the tariffs as applying to or from shipside?

A. Yes, that is set forth in Exhibit No. 38. That lists the terminals. The ports are arranged in alphabetical order, and the private terminals at those ports are arranged alphabetically where there is more than one. When we publish an export rate to the ports, the export rate applies on traffic handled over these terminals, but it does not include the wharfage and handling service even though stated as applying to shipside. I call attention to some of the terminals in here. For example, under Charleston, one of the ports we reach, we name the American Agricultural Chemical Corporation dock, operated by American Agricultural Chemical Corporation.

That concern handles fertilizer and fertilizer materials, and it imports many of them. When the materials or the mixed fertilizer are shipped to the interior, we do not apply the import rates as from shipside. I might mention that in this exhibit are several government facilities. For example, the San Jacinto Ordnance Depot at Houston, Texas, on page three; the New Orleans Port of Embarkation wharf, at New Orleans, on page 5. I might also 500 mention in passing the docks, wharves, or piers listed under the caption of "Port Wentworth, Georgia," on page 6. There are three terminals there, or wharves, owned by the General Chemical Company, the National Gypsum Company, and the Savannah Sugar Refining Corporation, respectively.

The tariff provides that as to the freight owned by those respective companies, handled over those docks, wharves, and piers, will—the rates will not be given shipside application, but as to freight of the public handled over those same docks, and by these dock operators, for the public, the rates will have shipside application.

Q. In general, how are export rates from southern points to Norfolk and South Atlantic and Gulf ports made?

A. From that large territory, an important territory from the standpoint of origination of export and termination of import tonnage, generally called Central, Illinois, and southern ports Foreign Freight Committee territory, roughly the Ohio River crossings, and points north and west thereof, from and to which the business is highly competitive, as between south Atlantic and Gulf ports on the one hand. Norfolk also, and the North Atlantic ports, particularly Baltimore, on the other hand, the railroads serving these southern ports and their connections endeavor to make the rates as nearly the same as the rates to and from Baltimore, as possible. Generally speaking, the ocean rates are the same beyond the ports, or 501 closely related, and unless they could have a substantial parity there would not be very much chance to participate in the export and import movements.

It has been outlined in this proceeding that at Baltimore, and at other ports, Norfolk and north thereof, due to competition among the ports, provision is made for the absorption of wharfage and handling charges, terminal charges, on freight to and from that territory that I have described. It wouldn't do us much good to meet the rate itself, the line-haul rate, without providing for the inclusion of wharfage and handling charges, because we wouldn't be competitive. So, although the distances are greater, we have equalized those rates, and to equalize them all the way through we have given shipside application to the export and import rates.

Now, when you come to southern territory, it is true that because of the low level of those rates, so established to and from the Ohio

River crossings, it is necessary to haul them as maxima to and from intermediate. That affects generally the Kentucky and Tennessee area, and sometimes it cuts as far down as north Alabama, and north Georgia, because the export and import rates to and from the Ohio River crossings have been given shipside application in the manner outlined, the fourth section necessitates our giving shipside application to the rates to and from these intermediate points.

Now, there are a few instances other than those in which we make rates for export freight from southern points to southern points in the north, to include shipside delivery.

Generally, that is done when, because of competition between the point from which that rate is made, and on the commodity under consideration, with some point in official territory at which that commodity is produced, we make the rate on the same level mile for mile, as within official territory, and because the rate in official territory and to North Atlantic ports has shipside application, we sometimes give shipside application to our rates so made. That is rather rare.

Q. Well, if I understand what you have said correctly, the export rates from the south are made with particular regard to competition; particularly competition between the different ports; is that right?

A. Yes, that is right.

Q. Now, in making import and export rates between Norfolk and ports south thereof, on the one hand, and interior points on the other hand, are such rates made with any particular regard to the port privileges, and whether wharfage and handling charges will be paid by the railroads or by the shipping public?

A. No, I think from what I have said it is evident that the measure of these rates is governed by considerations other than whether or not we find it necessary to meet competition to give those rates shipside application.

Q. Do you mean by your answer that export and import rates between the south on the one hand and Norfolk and ports south thereof on the other hand, contain no element of factor of compensation for the port terminal services?

A. That is what it comes to.

Q. Have you a rate exhibit which will illustrate this point?

A. Yes, I think exhibit No. 39, with four pages, illustrates it pretty well.

In that exhibit we have taken a representative list, in fact, practically all of the commodities, on which export rates are published from southern points to Norfolk in this tariff that we have been talking about, agent Spaninger's ICC No. 1255, general export tariff, that is, such of the rates as are published to shipside. There are many more export rates in this tariff, but they are non-shipside

rates. I don't mean I have taken every shipside rate. For example, on some of these commodities I have shown rates from five or six points. There may be rates from more points than that on that commodity, but I have taken a very full list of the commodities.

I have compared the export shipside rate with its carload minimum weight with the contemporaneously applicable domestic rates and minimum weights.

Now, if these rates, export shipside rates, were not shipside rates, but were non-shipside rates, we would have to add about five cents a hundred pounds to them, as provided in the port charges tariff in order that they would apply to shipside.

504 Now, you will see, even if that five cents was added, these rates would still be in practically all cases substantially lower than the domestic rates. It might be asked whether or not that is necessarily proof of the reasonableness of these export rates, but because you might say the domestic rate may not be reasonable, necessarily, but I can illustrate by taking up the representative shipments that they are. Many of them are on a level fixed by the Interstate Commerce Commission, or approved in investigation and suspension cases, for application on these commodities generally throughout the south.

There are others which, although I can't for the moment cite references to Interstate Commerce Commission approval, I will say they are on the same level as the level of rates that moves the same commodity generally throughout the south. For example, take the second line in the Exhibit "tight barrels;" the domestic rate of \$1.13 is on the level that was prescribed or approved by the Interstate Commerce Commission in ICC Docket No. 19585, 151 ICC 175. That involved rates on this commodity from St. Louis and several Kentucky points to Chicago, Pittsburgh, Buffalo, Covetown, and several points in Michigan. It happens to be the same level that was affixed generally in I&S Docket No. 79, 25 ICC 641.

Dropping down to copra, cake or meal; the level of that domestic rate of \$14.40 a ton is that which was fixed on cottonseed and its products and related articles in ICC Docket 17000, part 8, 505 203 ICC 177.

Q. Mr. Hicks, before you go any further, I would like to ask counsel a question:

I understood Mr. Broz to say that the line haul rates are not in issue in this proceeding. Is that the complainant's position?

Mr. KREBILL: Yes, that is correct.

Mr. REYNOLDS: So, so far as you are concerned, the measure of these line-haul rates shown in Exhibit 34, are not in issue in this case.

Mr. KREBILL: No, sir.

Mr. REYNOLDS: Well, now, let me ask you another question in order to clarify the thing:

Is the government claiming that ~~C~~ should have allowance for wharfage and handling when traffic moves under a Section 22 quotation?

Mr. KREBILL: It is my understanding there is very little traffic moving here for export under Section 22 quotations.

Mr. REYNOLDS: But as to that little, it is the government's position it should have allowance for wharfage and allowance for handling that?

Mr. KREBILL: Section 22 quotations are usually complete in and of themselves, and I think whether or not handling would be accorded on that would depend upon the negotiation of the rate. In other words, it would be one of the elements of the elements
506 of the Section 22 quotation. It might and it might not.

Mr. REYNOLDS: Do I understand from that then, that a section 22 quotation does not provide for wharfage and handling, the government doesn't claim an allowance for wharfage and handling, or doesn't provide for shipside application, the government is not claiming an allowance for wharfage and handling?

Mr. KREBILL: Not unless there is some provision in the tariff which would bring it in. I don't know. I wouldn't be in a position to say.

Mr. REYNOLDS: Of course, Section 22 rates are not tariff rates.

Mr. KREBILL: Yes, I know. But if the Section 22 quotation makes reference to a tariff rate, thereby incorporates some parts of the tariff, then to that extent it might involve handling, and it might not.

Mr. REYNOLDS: How many shipments did the Atlantic Coast Line Railroad handle—

The WITNESS: Excuse me, before we leave this exhibit, in view of what has been said, it may not be of much point, but I discovered two typographical errors in the tariff authorities, and it may be well to correct them.

On page 2, the second group, opposite iron and steel articles, you find the letter "F". It ought to be G. Out in the last column.
507 And on page 3, opposite caustic soda, you find the letter "F", and it ought to be "E".

Incidentally, there were some movements via Atlantic Coast Line Railroad to the Army base terminals since May 1, 1951, on some of the rates shown in this exhibit, some of the domestic rates—I don't know whether they moved on the export rate or not, because I don't know whether the freight was exported. But if it had been a commercial shipment, it would have moved on the export rates in this exhibit.

By Mr. REYNOLDS:

Q. Does that complete your comments on Exhibit 39?

A. Yes.

Q. How many shipments did the Atlantic Coast Line Railroad handle to Norfolk during the month of December, 1951, that was moved over—that were moved over Army base terminals at that point?

A. 56.

Q. How many of these shipments were commercial freight, and how many were for the government?

A. I beg your pardon. I said 56. It should have been 72. 56 of them were government freight, and 16 were commercial freight.

Q. Have you obtained and carefully examined the railroad billings covering each and every one of these shipments?

A. Yes, I have.

508 Q. How many of these shipments of government freight did the billing indicate to be shipments for export?

A. 14.

Q. How many of these shipments of commercial freight did the billing indicate to be shipments for export?

A. Of the 16 shipments, 15 of them were shown to be for export, and most of them showed the name and sailing date of the vessel.

Q. Did the billing in connection with any of these shipments, either government or commercial, indicate the freight was for export, and in addition the country for which it was destined, sir?

A. No.

Q. Did the tariff publish specific export rates to Norfolk on any of the commodities involved in the government shipments and from the origins from which they moved?

A. No, they all moved on the domestic basis.

Q. You mean, they were so-called non-shipside rates; is that right?

A. Yes, they weren't even export rates.

Q. Have you also obtained and carefully examined copies of the railroad billing covering all of the shipments handled by the Atlantic Coast Line railroad from Norfolk, during the month of December, 1951, and handled over Army base terminals at
509 that point?

A. Yes.

Q. How many of these shipments consisted of government freight, and how many of commercial freight?

A. There were only three shipments of government freight, and there were not any movements of commercial freight.

Q. How many of them indicated on the billing that the freight had been imported?

A. None of them.

Q. Have you made a similar analysis of shipments moving via the Atlantic Coast Line Railroad to and from Army base terminals at Norfolk for any longer period than one month of December, 1951?

A. Yes. I have made a similar analysis of the movement via Atlantic Coast Line for the entire period May through November, 1951, which, added to the analysis I have just mentioned, would cover the last eight months of the year.

Q. Did you obtain and personally examine the freight bills on each and every one of these shipments to Norfolk, and the waybills for each and every one of these shipments from Norfolk?

A. Yes.

Q. Dealing with the shipments to Norfolk, how many consisted of government freight, and how many consisted of commercial freight?

A. 584 shipments of government freight, and 53 shipments of commercial freight.

510 Q. How many of the freight bills covering the 584 shipments of government freight showed that they were for export?

A. There were 112 that showed they were for export. Of course, in addition there were some that had what to me or any other layman would look like hieroglyphics that might have meant something to the Army, I don't know. The railroad wouldn't know.

Q. How many of these 112 went further and showed any indication what country the freight was intended for?

A. Nine.

Q. How many of these 584 shipments were such, that is, were such commodities, and from such origin as would have been subject to export, as distinguished from domestic rates, if they had been commercial shipments and handled over terminals of railroads or their contracting agents?

A. 20. There were six of them on non-shipside export rates, and 14 of them on shipside export rates, but of that 14 the total moved in open top cars, and would not have—even though the rate were published as shipside, they would not have had the unloading privileges.

Q. How many of the freight bills in connection with these 584 shipments of government freight to Army base terminal at Norfolk showed that wharfage and handling charges were collected or were to be collected by the railroad in addition to the line haul freight charges.

511 A. None of them.

Q. Did you say none?

A. None of them.

Q. Dealing now with shipments of commercial freight moved by the Coast Line to Army base terminals at Norfolk, during the 7 months' period May through November, how many were there?

A. 53.

Q. How many were billed as export shipments according to the information shown on the freight bills?

A. 33 of them.

Q. How many of these indicated the foreign country destination, if you know?

A. Six.

Q. How many of them moved on specific export rates?

A. Three.

Q. Were those rates published as shipside or non-shipside rates?

A. Non-shipside.

Q. How many of these freight bills covering the 53 commercial shipments of export freight to Army Base moving in these seven months showed that wharfage and handling charges were collected by the railroads in addition to the line-haul freight charges?

A. 75.

Q. Now, let's look at the shipments from Army base terminals moving from Norfolk by Atlantic Coast Line during the 7 months, May through November.

How many shipments of government freight, and how many of commercial freight, were there?

A. 83 shipments of government freight, and 42 shipments of commercial freight.

Q. Have you personally examined the freight bills in connection with each of them?

A. Yes.

Q. How many of the 83 government shipments carried any information which would indicate that they had been imported?

A. None. In fact, quite a number of them showed definitely to be the contrary. They showed that the contents had not been imported.

Q. Well—

Exam. DIAMONDSON: You don't mean that the billing showed "not imported," do you, Mr. Hicks?

The WITNESS: I mean, it carried that information, from notations on the billing I knew it had not been imported.

For example, some of them carried the notation "this freight shipped in same car in which received." Some might say "this freight reshipped without unloading from car," or they might have shown "E. bill of lading Number so and so," with a government bill of lading number on it, that kind of notation, sir.

513 By Mr. REYNOLDS:

Q. Are you through?

A. Yes.

Q. How many of the waybills covering the 42 commercial shipments carried information that the freight had been imported?

A. 36 of the 42, and 32 of those showed the name of the vessel on which they had been imported.

Q. How many of the government shipments consisted of commodities on which, and were destined to points to which specific import rates were published?

A. None of them.

Q. How many of the 42 commercial shipments were subject to specific import rates as distinguished from domestic rates?

A. 23.

Q. Did these 23 rates apply from shipside?

A. No, none of them.

Q. How many of the waybills covering these 42 shipments for commercial freight from Norfolk showed that wharfage and handling charges had been advanced to the terminal and were collected or to be collected by the railroad from the consignor or the consignee?

A. 20.

Q. Since the Army took over Army Base terminals at Norfolk, on May 1, 1951, has the government made any shipments via the Atlantic Coast Line to this terminal, of commodities upon which export rates as distinguished from domestic rates, are published?

A. Yes, quite a few.

Q. In such cases, did the government give the Coast Line proof of exportation within 60 days of the date the rail carrier delivered the shipments to the United States Government?

A. The 60-day period has not yet expired in connection with such shipments, if any, as may have been delivered since January 27, but confining my answer to shipments delivered prior to that date, the requirement of the tariff with respect to such proof of exportation has not been met in connection with a single shipment.

Of course, it may be that none of the shipments upon which export rates are published to Norfolk was actually exported, but we have no way of knowing.

Q. Have you any reason to believe that any government freight shipped during the period January—during the period May 1 to December 31, 1951; to the Army base terminal at Norfolk was not exported?

A. Yes.

Q. What makes you think so?

A. For one thing, included in the traffic were several shipments of coal. I think unquestionably this coal was used for heating purposes at Norfolk, and was not exported. I think that any export

515 coal would have been handled over coal tipples, at other terminals, at Hampton Roads, rather than over the Army base piers.

For another thing, examination of our billing covering shipments from the Army base terminal discloses numerous shipments from Norfolk to the interior of various commodities which undoubtedly moved by rail to the Army base terminal, and which were not exported, but were reshipped by rail to the interior.

Q. What were some of the commodities?

A. Included in the list were many commodities that showed up in the waybills covering the movements to Army base terminal, such as mattresses, lumber, rubber tires, compressed oxygen gas, and compressed acetylene gas in steel cylinders, barbed wire, nails, iron or steel fence posts, revolving power shovels mounted on automobiles, iron or steel pipe, paint, structural steel, plate or sheet iron, steel tanks, knocked down, vehicles, lubricating oil in drums, and so forth. The fact that a considerable part of such movements consisted of freight that had moved to the Army base terminal by rail, rather than being imported, is substantiated by the fact that including among the outbound waybills are quite a number which bear notations such as "this car trans-shipped as received, XBL," Number so and so. Also "Carry consigned without unloading." Also "Carry reconsigned without being unloaded, X lading," and so on, giving the number. Also "this car trans-shipped as received,"
516 also simply "XBL," with a number.

Q. Of all the shipments made by the Atlantic Coast Line Railroad from the Army base terminal, Norfolk, from May to the end of the year, how many were tendered to the railroad and billed as import freight as distinguished from domestic freight?

A. Not a single one.

Q. At the same time from May 1, 1951, to the end of the year, how many shipments of commercial freight were tendered to the Atlantic Coast Line for movement from Army Base terminals to the interior?

A. 42 shipments.

Q. How many of those were tendered to the railroad and shown in the billing as import freight?

A. 36 shipments.

Q. Do the Atlantic Coast Line Railroad, and Central of Georgia Railway operate their own export terminals at the port of Savannah.

A. Yes.

Q. Was any army freight exported over those terminals during the year '51?

A. Yes.

Q. Did the Atlantic Coast Line Railroad—

A. Wait a minute. I would say that during the year 1951 there

other words, if there was no delay because of the rail facilities, and no delay because of the vessel facilities, could you handle, over the piers which you have described, an average of 60,000 to 70,000 tons per month, in addition to that which you are handling?

A. Well, answering your question, as I understood the Colonel to answer it, that he had not testified the capacity of these piers, and if the ships were there to receive it, and it was just a matter of pipe-lining in, yes.

Q. There is testimony in this case, Mr. Dimmitt, to the effect that the normal movement of freight over the Army piers, prior to the time the Army took over, was about 2400 cars per year; on the same assumptions, you used in answering the other question, could you handle that additional 2400 cars per year, in addition to what you already are handling?

A. Yes.

Mr. FISHWICK: That is all. The witness is tendered for cross examination.

Mr. KREBILL: In view of that, I would like to have the last question and answer read.

(Question and answer read.)

Mr. FISHWICK: Let me clarify that.

By Mr. FISHWICK:

Q. In other words, you could handle 2400 cars of freight more over your piers now than you are handling in a year, can't you?

A. Under the premise that I would answer the other question, yes.

Exam. DIAMONDSON: You may cross examine.

CROSS EXAMINATION

By Mr. KREBILL:

Q. Is it your position that Lambert's Point docks could handle the traffic which is moving over the Army Base docks?

A. If the ships are in my piers, if the cars are there, and it is flowing through, yes.

Q. Well, is that the purpose of your testimony, to show that?

A. Yes.

Mr. KREBILL: I have no further questions.

Mr. FISHWICK: That is all.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

were 1,047 carloads of army freight exported over Coast Line and Central Georgia terminals.

517 Q. Did the Atlantic Coastline Railroad, Seaboard Airline Railroad, and Southern Railway, transport any Army freight to the ports of Charleston, South Carolina, or Jacksonville, Florida, for export during 1951?

A. Yes. My figures on that don't exactly coincide. The Seaboard and Southern Railway movement figures are only for the last 6 months of the year 1951, whereas the Coastline figures are for the whole year, and I have no means of breaking the Coastline figures down to make them comparable.

However, through Charleston, there were 186 carloads moved by Seaboard and Southern, for export—that is during the last 6 months—but the Coastline moved 387 during the whole year. I think if you would divide that in half, and add it to the 186, or multiply the 186 by 2 and add it to ours, you would get the year or half year as you needed it. Through Jacksonville, Florida, the Southern and Seaboard moved 177 cars of Army freight for export, during the last 6 months.

The Coastline figure for the whole year at Jacksonville is considerably less than that. We didn't handle much through Jacksonville. I think it was about 19 or 20 cars.

Q. Does all Army, Navy, and Marine export freight, to and from Army Base terminals at Norfolk, move on published tariff rates?

A. No, a good deal of it, at least a relatively large percentage—but I am inclined to believe it may be a relatively large percentage on section 22 quotations.

518 Have you any exhibits to illustrate the extent of the savings to the government in freight charges that accrue by reason of the benefit to it of these Section 22 quotations as compared with tariff rates that would have to be paid by commercial shippers on like movements?

A. Yes. There are a number of these Section 22 quotations which might come into play, and I have prepared 4 exhibits to illustrate certain shipments that move via the Coastline, involved in 4 of these quotations. The first, we'll take, is Atlantic Coastline Railroad Section 22 quotation No. 447, of July 19, 1950. The operation of that Section 22 quotation is illustrated in Exhibit No. 40. It quotes a charge of \$66 per carload of 30,000 pounds, excess in proportion, on Marine Corps freight moving from Army base terminal, Norfolk, Virginia, to Marford, Virginia.

Exhibit No. 40 illustrates the operation of that, in connection with ten representative shipments. It shows that as compared with charges based on the commercial rates, there was a saving of \$221.14.

Another Section 22 quotation, AAR No. A-16, of March 23,

1949, is illustrated by 6 representative shipments in Exhibit 41. The effect of that quotation is to waive the operation of Rule 34 in the classification on freight in open top cars, and to make applicable the charge on the car of the length ordered rather than on the car of the length furnished.

519 On these 6 shipments illustrated, there was a saving of 770 dollars, 66 cents, as compared with the tariff charges, an average of \$128.44 a car.

All of the freight bills covering these shipments illustrated here bore on their face the notation, "Car, 40 feet 6 inches in length ordered, car of so many feet—", depending on how many, on the length of the car for that shipment—"furnished. Authority, AAR Section 22 quotation, A-16".

Exhibit No. 42 illustrates the operation in connection with representative shipments moving by Coastline to Army Base Terminal, during the period May through November, 1951 of Section 22 quotation No. 16-F, of March 31, 1945. This authorizes the through rates, plus a transit charge, on these shipments that were stored in transit, or otherwise transited, at Army depot, Georgia, and Brooklyn, Alabama, as compared with the combination of published rates to and from the transit points.

The Exhibit is self-explanatory. It shows the transit charge and the through rate in one column, and the combinations in the other column.

Q. What does Exhibit 43 show?

A. Well, on the 19 shipments, illustrated here, there was a saving of an average of \$186.96 a shipment.

Exhibit No. 43 illustrates on 12 representative shipments the operation of Coastline Section 22 quotation No. 532 of 520 September 1951, on shipments from Norfolk to Marford, Virginia. I have not illustrated on my exhibits all of the section 22 quotations that come into play. But I have run through the exhibit and picked out some other Section 22 quotations. The Atlantic Coastline Railroad Section 22 quotation, No. 181-A, applies on Pontoon bridges, or parts. There was a shipment—on June 14, 1951, from Army Base Terminal, to Americus, Georgia, weighing 39,125 pounds for this material. They charged under the section 22 quotation basis, which was \$413.61, less than on the commercial basis.

Q. Don't you think you can just say how many more of those you have, without commenting on each one?

A. I have three more. You don't want to know what they were about, or what they covered or anything?

Q. Can you tell us the total amount saved?

Mr. KREBILL: While he is stating that, I wonder whether he would state whether those are quotations for the Army, or Navy, or Marine Corps, or for some other agency.

The WITNESS: Well, here is one right here, No. 319-A, which covered a shipment from the Army at Memphis, to the Port Transportation Officer, here at the Army Base Terminal, moved on July 14, 1951. It was a mixed carload shipment of various articles, and the saving on the commercial basis on that was \$293.21. Some are for the Army and some are for the Navy, and some are for the Marine Corps.

521 But my point is we have quite a number of Section 22 quotations in addition to those that might be applicable on Army, Navy, or Marine Corps freight, either coming into, or going out of this base here. And I have no doubt that included—you see there were so many more shipments handled by other railroads than by Coastline, that there were plenty of shipments that would be caught in any one of these Section 22 quotations.

Mr. KREBILL: Well, would some of those Section 22 quotations cover only transit. Like I think one of them you mentioned particularly, 16-F, that is only a transit quotation, isn't it?

The WITNESS: That is the only transit quotation. I believe that is in here. I believe there is one other transit quotation that I didn't have, that I didn't pick out a shipment to illustrate. Other than that, all of the others are rate quotations. I must have 12 or 15 here with me, and I have a list of 25 or 30 more that I didn't bring along.

By Mr. REYNOLDS:

Q. What was the total saving in freight charges to the government on the shipments you have used as illustrative of the operation of Section 22 quotations on freight moving via Atlantic Coastline to and from the Army Base Terminal during the last 8 months of 1951?

A. \$5,948.87.

Q. If the Army had not taken over the terminal, and if the freight of the government had continued to be handled to and
522 from shipside by railroad, or by Stevenson & Young, as agent for the railroad, what would have been the total payment made by the Coastline to Stevenson & Young for the handling of this freight to and from shipside and for wharfage?

A. Now in answering that question, I have to give the benefit of every doubt to the figure, because I don't know which of these cars were transferred—the contents were transferred by ship's tackle direct from open top cars—but assuming we had paid wharfage and handling charges on every shipment that would have fallen into

Exam. DIAMONDSON: You are excused.

(Witness excused.)

Mr. REYNOLDS: Mr. Wolford.

W. W. WOLFORD was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. REYNOLDS:

Q. Please state for the record your name, address, and occupation.

A. W. W. Wolford, Norfolk, Virginia. I am assistant freight traffic manager of the Seaboard Airline Railroad.

Q. Outline briefly your traffic experience.

A. My traffic experience has covered a period of more than 30 years, the last 12 of which has been in my present capacity.

550 Q. Were you the witness for the Seaboard Airline Railroad in the prior case, Docket 29117?

A. I was.

Q. Are you familiar with the issues in the case now being heard?

A. Yes, sir.

Q. Have you an exhibit showing the private industries in Norfolk-Portsmouth area, having deep water facilities and rail connections?

A. Yes, sir.

Mr. REYNOLDS: May that be marked for identification?

Exam. DIAMONDSON: That will be marked for identification as Exhibit 51.

(Defendant's Exhibit 51, Witness Wolford, marked for identification.)

The WITNESS: This exhibit simply lists the private—the shippers who operate their own terminals for the handling of their own traffic in the Norfolk-Portsmouth area. These are being privately operated terminals, handling their own traffic, the railroads do not hold themselves out to handle the traffic or to make any allowance to the owners of those piers as wharfage.

By Mr. REYNOLDS:

Q. Wharfage or handling?

A. That is right. That is all I have to say about that exhibit.

551 Q. Let me ask you this, Mr. Wolford. Does the Army furnish the Seaboard Airline Railroad with proof of exportation as required by the Seaboard's tariff?

A. No, sir, we have not been furnished with any proof of ex-

portation of any of the traffic that has been handled since the Army took over on May 1, 1951.

Q. What have you to say about the Seaboard's piers and water facilities in the Norfolk area?

A. That will be covered by my other exhibit, which is No. 52.

(Defendant's Exhibit No. 52, Witness Wolford, marked for identification.)

The WITNESS: That exhibit is self-explanatory on its face, and really doesn't need any comment if you want to dispense with it.

By Mr. REYNOLDS:

Q. Well, if you think it may be dispensed with, it is all right with me.

A. I think so.

Q. All right.

Mr. REYNOLDS: Mr. Examiner, I ask that Exhibits 51 and 52 be received in evidence, and tender the witness for cross examination.

Exam. DIAMONDSON: Exhibits 51 and 52 are received in evidence.

(Defendant's Exhibits Nos. 51 and 51, Witness Wolford, received in evidence.)

CROSS EXAMINATION

By Mr. KREBILL:

Q. Mr. Wolford, on Exhibit 51, can you tell me what type
552 of commodities are moved over those piers?

A. Generally, yes. They fall into groups, as you will perhaps observe. There are several oil companies, and I will name them all, and then state the types of commodities. The American Oil Company, the Gulf Refining Company, the Pure Oil Company. All of those piers handle gasoline, fuel oil, kerosene, lubricants and greases; and other types of petroleum products. Then there is another group there of fertilizer manufacturers, the Armour Fertilizer Works, Co-operative Fertilizer Service, Chilean Nitrate Sales Corporation, and the Robertson Chemical Corporation, F. S. Royster Company, Smith Douglass Company, Virginia-Carolina Chemical Company, and the Weaver Fertilizer Company.

Q. How about Swift and Company?

A. Yes, Swift and Company. Those generally handle such items as sulphur, nitrates, potash, phosphate rock, and other fertilizer materials. Then there is the Imperial Tobacco, which handles tobacco in barrels or hogsheads over its piers for export. Then there is the Jones Cold Storage Company, which brings in such things as potatoes and canned goods. Then there is the Lone Star Cement

that category, and I know we would not have paid it on all of them, it would have been \$2,193.45.

Q. As against a saving to the government, by reason of Section 22 quotations, of almost \$6,000?

A. Yes, now on the one hand, the latter figure is the shipments I picked out as representative to illustrate these Section 22 quotations, while on the other hand, there was every single shipment handled in the 8 months that could possibly be involved.

Q. Does that conclude your direct testimony?

A. Yes.

Mr. REYNOLDS: Mr. Examiner, I offer in evidence Exhibits 36 to 43, inclusive, and ask that they be received.

Exam. DIAMONDSON: Any objection?

Mr. KREBILL: No objection.

Exam. DIAMONDSON: Exhibits 36 through 43 are received
523 in evidence.

(Defendant's Exhibits Nos. 36 thru 43, inclusive, Witness Hicks, were received in evidence.)

By Mr. REYNOLDS:

Q. Mr. Hicks, since it has been found to be impossible to finish tonight, suppose you comment on the other Section 22 quotations which you intended to comment on.

A. I think I commented on—one of them is Atlantic Coastline quotation No. 412. That is illustrated by a car which was shipped on August 28, 1951, by the freight terminal officer, Naval Supply Center, Army Base Terminal, to Yukon, Florida. It contained machinery parts, weighing 45,408 pounds, and because of the Section 22 quotation it moved at a saving of \$104.64 to the government as compared with tariff rates and charges.

I don't think I mentioned No. 44-A, Section 22 quotation No. 44-A, of the Atlantic Coastline Railroad, under which we handled a carload of landing mats, or runways, airfield, on September 7, 1951, from Jacksonville, North Carolina, to Army Base Terminal, Norfolk, for account of the Quartermaster, United States Marine Corps, and on which there was a saving of \$177.06 to the government, as compared with tariff rates and charges. I think I mentioned the others that I had here to illustrate shipments moving via Coastline in that period.

Q. Does that complete your direct testimony?

A. Yes.

524 Mr. REYNOLDS: You may cross examine.

CROSS EXAMINATION

By Mr. KREBILL:

Q. In Exhibit 38, you listed a number of private terminus. I understood you to say the export rates apply over those terminus?

A. Yes, export rates apply on freight handled over those terminals.

Q. Do those shipments leave the possession of the carrier?

A. Yes. That is the reason we don't include wharfage and handling charges in them—or one reason.

Q. But you do apply the export rates, even though they do leave their possession?

A. The tariff provides for the application of the export rates, but not including the wharfage or handling services.

Q. Several of the piers that you mentioned are government piers. Do you know how many of those are ammunition piers?

A. I don't think I mentioned but two of the government piers. One of them I think I mentioned was the San Jacinto Ordnance Depot, at Houston, Texas, I think that is an ammunition pier. But the New Orleans Port of Embarkation Wharf is not.

Q. How about Theodore, Alabama?

A. I didn't mention it. It is in the exhibits, but I don't think I mentioned it specifically.

Q. It is in the exhibits?

A. Yes.

525 Q. Is it an ammunition depot—I didn't mean depot, I meant pier.

A. It is, yes.

Q. How did you determine that out of 56 government shipments, 14 were for export?

A. I did not say, I don't think—wait a minute—

Q. That is during December, 1951.

A. I said 14 of them indicated on the waybills that they were for export.

Q. 14 indicated on the waybills. You got your information from the waybills?

A. And the bills of lading.

Q. Did you get the information from the accomplished bills of lading?

A. No, I got it from the shipping papers, the waybill and the bill of lading issued at origin.

Q. I see. Well, were you in the hearing room when Colonel Smith testified?

A. Yes.

Q. Did you hear him explain how the bill of lading was accomplished, showing for export?

A. Yes, I heard what he said, and while I have a high regard for Colonel Smith, I am afraid that he doesn't have the facts exactly right on it.

Q. Well, is any kind of export certification given to you
526 on these shipments?

A. Not what I would consider such. I have examined some of those so-called accomplished bills of lading, and which are nothing more nor less than the government bill of lading that is returned to the railroad when we deliver the shipment, and on those bills of lading there is stamped with a rubber stamp the words, "I certify that this shipment is for export." Now, the statement of intention to export is not proof of exportation.

Q. Are you paid the export rates on those shipments?

A. Yes, they pay us the export rates, whether the shipment is exported or not. We have had a lot of trouble on that. I didn't intend to go into all that, but we have had literally hundreds of shipments, which although the tariff requires that the government furnish the railroad with proof of exportation, not that the railroad go and prove that the shipment wasn't exported, yet we were paid on basis of the export rate, and we had a great deal of difficulty in having our money refunded—I say we were paid on the basis of the export rate. Actually we collected charges in the initial instances on the basis of the domestic rate. Then when the general accounting office checked those bills, they reduced our revenue and cut our money back to the basis of the export rate, and it was only through considerable negotiation that we were finally able to get the Army
527 to go through its old records and certify which of the shipments had been, and which had not been exported, and they paid us back on 221—well, I say paid us back on 221—we issued on the basis of their inability to certify as to exportation, 221 bills for additional money. Many of those bills covered several shipments each, and all of those except 11 now have been paid. So, a mere statement that it is intended to export, or "I certify this shipment is for export.", as I say, is not proof of exportation.

In the first place, even if there was certification that this shipment has actually been exported, it must be given to the railroad under the tariff applicable from Southern Territory within 60 days of delivery of the freight to the government. Now you heard it testified here the other day that many of these shipments have been here for months. Even if we had the certification on those, when you do export them, the export rate would not be applicable.

Q. When the government bill of lading is accomplished, stamped "for export", by the Port Transportation Officer, do you bill in your voucher—I mean in your bill—at the export rates, or at the domestic rates?

A. The agent at destination, our agent at Norfolk, for example,

does not collect the freight charges. He gets this government bill of lading when he delivers the shipment. When I say delivers it, it is sometimes several days, a week or more, or months later, and he sends that to headquarters, and then the Accounting Department of the railroad sends it to Washington as a claim for the freight set forth in the bill.

Now, frankly, I am not sure, I haven't made inquiry in the accounting department, whether at the time they ask for that freight, or payment of the freight charge, they ask for it on the basis of the export rate or the domestic rate. But as you know there is a later verification, both by the railroads and by the General Accounting Office of the Government of the freight charges, and I should say that would be the time when they would really decide what would be paid.

Q. Well of course when the carriers bill for the transportation charges, are submitted to the Finance Office here in Washington, or wherever it is, accompanied by the accomplished bill of lading, the carrier's bill shows what rate he is billing for, does it not?

A. It would show what rate he is billing for, but the point I am making is, not only in connection with government shipments, but in connection frequently with domestic shipments, there is either an undercharge or an overcharge at the time of initial collection of payment.

Q. I realize that, but I only want to know whether on those bills of lading, that is, on shipments covered by bills of lading which are accomplished and stamped "for export", what the billing is, and I believe you stated you did not know?

A. Frankly I don't know what the clerk in the Accounting Department would show on the bill in that case, but as I say, that would not be final anyway. It would be subject to check.

Q. Yes, I appreciate that.

Now, out of these 56 shipments, is it your opinion that only 14 of those were exported?

A. No, I don't know whether any of them were exported. My statement was that only 14 of the 56 indicated that they were for export, even those that indicated they were for export, I'm not saying whether they were exported or not.

Q. I see. But the indication which was put on those bills of lading that they were for export, were put on at origin?

A. Yes.

MR. KREBILL: That is all.

EXAM. DIAMONDSON: Do you have any further questions, Mr. Reynolds?

MR. REYNOLDS: No, sir.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

CARL W. DILLI was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. DIXON:

Q. State your name and occupation.

A. Carl W. Dilli, Assistant Freight Traffic Manager, Southern Railway System, Washington, D.C.

Q. How long have you been in traffic and rate work?

530 A. Over 30 years.

Q. And you testified in the prior case, did you not?

A. I did.

Q. Are you familiar with the issues in the present case?

A. I think I am, yes.

Q. And you have some testimony and supporting exhibits that you wish to introduce?

A. I have.

Q. Please go ahead in your own way.

A. There is no general line of export, import, intercoastal, or coastwise class rates in effect between points in Southern territory and the Gulf, South Atlantic and Virginia ports. It is true that the Ohio River class rates are observed as maxima on traffic moving through the Gulf and South Atlantic ports, but this is not true on traffic moving through Norfolk.

However, commodity rates have been published and are presently in effect between specified points in Southern territory and the Gulf, South Atlantic and Virginia ports, applicable on water-borne traffic. These rates have been published to meet the requirements of particular traffic with only limited equalization between the several ports. They have never been considered in a comprehensive way by the Commission.

It has been the general practice of the Southern lines to publish their rates on water-borne commerce to not include wharfage
531 and handling charges. As I shall later show, some of the shipments moving over the Army Base in connection with the Southern Railway Company moved under rates which applied to shipside. Nothing was put into those rates to cover the expense of wharfage and handling.

Exhibit No. 44 is a reproduction of Item 155 of Agent C. A. Spaninger's Southern Export Tariff No. 705-J, ICC 1254.

(Defendant's Exhibit No. 44, Witness Dilli, was marked for identification.)

This tariff contains practically all of the export rates from points in the South to the Gulf, South Atlantic and Virginia ports. Item 155 as shown in my exhibit lists the conditions under which these rates apply. Particular attention is called to paragraph (5) of the item which reads as follows:

"On traffic consigned to the United States Government and handled through Navy Bases, Navy Yards or Army Bases, the rates herein apply only provided proof of exportation is given to the inbound line haul carrier within sixty days of date rail carrier delivers shipment to the United States Government."

My investigation develops that the Government has never made proof of exportation on any shipment handled through the Army Base at Norfolk in connection with the Southern Railway Company. In the circumstances, it would appear that the Government is not entitled to the application of the export rates on shipments
532 which have moved under the rates published in Agent Spaninger's Southern Export Tariff ICC No. 1254—at least not on those which have moved in connection with the Southern Railway.

Exhibit No. 45 is an excerpt from Agent Spaninger's Georgia Class Rate Tariff ICC No. 712.

(Defendant's Exhibit No. 45, Witness Dilli, was marked for identification.)

The exhibit shows the basis for the rates to shipside at the Hampton Roads ports on export, coastwise and intercoastal traffic in the absence of specific rates. It will be noted that if the charges accruing under the rail-water or all-rail rates via Norfolk, etc., to Baltimore, Md., as published in tariffs listed in Item 135 of the tariff are lower than the charges accruing under the rates to Norfolk, Portsmouth, etc., plus wharfage and handling charges, the lower charges resulting from the rates to Baltimore, Md., will apply to shipside at Norfolk, etc.

In this connection I would like to refer to footnote (2) in the second report of the Commission on reconsideration in Docket 29117, 264 ICC 683-686, reading as follows: "The rates of the southern lines generally include wharfage and handling only where the Baltimore rate basis applies and where competition requires it; for instance, from points in Central Freight Association
533 territory."

The effect of this hold-down is to depress the normal rate adjustment on export, intercoastal or coastwise traffic to Norfolk, Va. In the report on reargument in Docket 29117 (269 ICC 141, 147) the Commission referred to the fact that there is nothing inherent in export traffic which entitles it to lower rates than those applied to domestic traffic.

556-557 Before the Interstate Commerce Commission

No. 30939

UNITED STATES OF AMERICA

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY, ET AL.

Stenographer's Minutes of Hearing of April 8, 1953

Hearing Room "B", Interstate Commerce Commission, Washington, D. C., Wednesday, April 8, 1953.

The above entitled matter came on for oral argument before the Commission at 10 o'clock a.m.

Present: Chairman ALLDREDGE (Presiding), Commissioners LEE, MAHAFFIE, SPLAWN, PATTERSON, JOHNSON, MITCHELL, CROSS, KNUDSON, ELLIOTT, and ARPAIA.

APPEARANCES:

RAYMOND KREBILL, Office of Judge Advocate General, Department of Army, Washington, D. C., appearing on behalf of Complainant.

WINDSOR F. COUSINS, 1740 Suburban Station Building, Philadelphia, Pennsylvania, appearing on behalf of Defendants.

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Proceedings

Chairman ALLDREDGE: Number 30939, United States of America against Aberdeen and Rockfish Railroad Company, et al. We will hear argument in this proceeding. Mr. Krebill, you may proceed.

ARGUMENT OF RAYMOND KREBILL

Mr. KREBILL: May it please the Commission, this case involves handling. That is, the loading and unloading to and from cars of certain kinds of freight which can be described generally as box car freight as distinguished from open top car or tank car freight, and wharfage which is the payment by the railroads for the use of wharfage facilities which they do not own or lease.

The port facilities involved in this case are used in the shipments of both military and commercial freight. There is only one principal issue. That issue is whether military traffic is entitled to wharfage and handling to the same extent that like traffic of a commercial nature is accorded handling and wharfage by the defendants.

Defendants' position seems to be that since the first of May,

Exhibit No. 46 is an excerpt from Agent Spaninger's Alabama, Georgia-Southern Lumber Tariff ICC No. 894.

(Defendant's Exhibit No. 46, Witness Dilli, was marked for identification.)

This exhibit is similar to my previous exhibit except it will be noted that in the case of lumber the provision as to the Baltimore rates applies to all-rail rates to Baltimore whereas on class rate traffic either the Baltimore all-rail or rail and water rates are used to hold down the Norfolk rates in instances where the Baltimore rates are lower than the Norfolk domestic rate plus wharfage and handling charges.

The pertinency of this exhibit lies in the fact that lumber constitutes the heaviest moving commodity to the Army Base Piers in connection with the Southern Railway.

Exhibit No. 47 is an excerpt from Agent Spaninger's Southern Coastwise Tariff No. 724-F (ICC 1146).

(Defendant's Exhibit No. 47, Witness Dilli was marked for identification.)

Complainant also seeks an allowance for wharfage and
534 handling on coastwise and intercoastal traffic. So far as we have been able to determine there has been no movement of this type of Government traffic over the Army Base in connection with the Southern Railway. There are only a few specific commodity rates between points in Southern territory, on the one hand, and Norfolk, Va., on the other, applicable on coastwise and intercoastal traffic. In the absence of specific rates on coastwise or intercoastal traffic, the domestic rates would apply—to which would have to be added the published charges for wharfage and handling.

Exhibit No. 48 reproduces Items 405 and 410 of Southern Railway Port Terminal Tariff ICC No. A-11248.

(Defendant's Exhibit No. 48, Witness Dilli, was marked for identification.)

These items govern the application of export, import, intercoastal and coastwise rates on traffic moving to or from Norfolk via the Southern Railway Company.

Item 405 applies on traffic moving through the Norfolk Terminals Division of Stevenson and Young, Inc. Item 410 applies on traffic moving through the terminals indicated in that item. The groups referred to in Items 405 and 410 are explained on pages 2 and 3 of the exhibit.

It will be observed from those pages that stations in Official territory and west of the Mississippi River are included in Group I.

1951 when the army acquired possession of a part of the port facilities that there is no obligation on their part to provide for wharfage on a shipper's freight moving over a private pier. Complainant denies that the situation presented in this case permits discrimination between military and commercial traffic. The port facilities involved in this case are the same as those which were considered by the Commission in Docket No. 29197, and in which reports were issued in 263 I.C.C. 303, 264 I.C.C. 683, and 269 I.C.C. 141

That case, as you know, also involved handling and wharfage at Norfolk. It was decided by the Commission adversely to the complainant.

Commr. KNUDSON: That case was under World War II conditions, and those conditions had changed, and then the Army had taken over certain of the pier facilities again at the opening of the Korean situation.

Mr. KREBILL: Yes, that is substantially correct. Now, our position is that the facts in the first case are not exactly the same as they are in this one. The fact is, we feel that the facts as presented in this case are somewhat more favorable to complainant than they were then.

That case, the earlier case, has also been in litigation over a number of years and the present status of it is that the Commission in January reopened the proceeding for the purpose of taking action consistent with the decision which was rendered in July, 1952 by the United States Court of Appeals for the District of Columbia, in *United States versus I.C.C.* 189 Federal, 2nd, 958.

One of the reasons for bringing this proceeding while the other one was still pending was the fact that the Commission considered that the other case involved reparations only in that the real basis for the complaint in that case was removed when the Government relinquished control of the pier facilities in about 1946 or 1947, I believe it was.

The present case covers a period beginning with the First of May, 1951.

Commr. KNUDSON: You have these pier facilities over which this traffic moves and control them on a basis of a revocable permit through the Maritime Commission, do you not?

Mr. KREBILL: The pier facilities are, you might say, in the custody of the Maritime Administration.

Commr. KNUDSON: By permit from the Army back to the Maritime Administration?

Mr. KREBILL: That is not quite the situation. The Maritime Commission has given the Army a permit for the use of a certain portion of the piers. It has also given the Navy a permit for one-half of one of the piers and certain adjacent facilities.

Items 405 and 410 provide that the line-haul rates on Group 535. I traffic will apply to shipside, i.e., include wharfage and handling charges. This authorization is contrary to the general practice of the southern lines and was published to permit the Southern Railway to meet the competition of routes through Official territory where the rates apply to shipside.

During the period May 1, 1951 to December 31, 1951, the Southern Railway Company handled 199 carloads of Government freight to Norfolk, Va., for the Army Base. The preponderance of this traffic originated at points in Southern territory; the balance in the West. Of the 199 cars, 122 moved under rates which do not include wharfage or handling charges and therefore would not be involved in this complaint. The remaining 77 cars moved under rates that do apply to shipside.

In the same period the Southern Railway did not handle a single car of Government import, intercoastal or coastwise traffic that had moved over Army Base Piers 1 and 2. Of the 77 cars which moved to Norfolk under shipside rates, 41 cars moved under the Baltimore, Md., all-rail or rail and water rates which, under the fourth section, are observed as maxima to Norfolk.

The Southern Railway System serves the ports of Norfolk, Va., Charleston, S. C., Savannah and Brunswick, Ga., Jacksonville, Fla., Mobile, Ala., and New Orleans, La. At none of those ports do we

536 make any allowance for wharfage and handling on waterborne freight passing over private terminals or where the freight is owned by the operator or owner of the pier facility. The only allowance made for wharfage and handling by the Southern (and other southern lines) is the compensation we pay others under contract to perform the service for the railroads on public waterfront terminals. Where the shipper or receiver volunteers to perform the service himself, no allowance is made.

The only similar facility to the Army Base is the New Orleans Port of Embarkation at New Orleans, La. That facility is located on the Poland Street Wharf which is leased by the Government from the Board of Commissioners of the Port of New Orleans. There is a substantial movement of traffic over that facility. The Army furnishes its own wharf and performs its own handling and no allowances are made for such services by the railroads. This practice was upheld by the Commission in Docket No. 29185, 266 ICC 45.

There is a movement of Government freight through other southern ports, e.g., Charleston, S. C., Savannah, Ga., Jacksonville, Fla. and Mobile, Ala. Such freight moves through public waterfront to terminals, the operators of which receive their compensation under arrangements with the railroads.

Exhibit No. 49 is a copy of the original agreement dated April 1,

Commr. KNUDSON: They took that away from Stevenson and Young at the beginning of this Korean situation, gave it to the Army, and the Army gave it back in part to the Maritime Commission, and the Maritime Commission back to Stevenson and Young on a revocable permit as distinguished from a lease basis. Isn't that the fact?

Mr. KREBILL: Well, the permit to the Army, of course, 561 provides that the Army can use as much of the facilities as is necessary. And the Army did sub permit a part of it back to the Maritime Administration which then gave a contract to Stevenson and Young.

Commr. KNUDSON: Was it a contract that Maritime gave to Stevenson and Young, or another sub permit from the Maritime to Stevenson and Young which was revocable?

Mr. KREBILL: It is revocable, yes.

Commr. PATTERSON: Why was the pier used at the time for commercial traffic? Was it?

Mr. KREBILL: Yes.

Commr. MITCHELL: Stevenson and Young have also been performing under contract?

Mr. KREBILL: That is on performance with certain services there.

Commr. MITCHELL: Isn't it an accurate statement to say that the Army controls and operates this terminal itself regardless of these contracts? You are in charge, isn't that true?

Mr. KREBILL: The Army does.

Commr. MITCHELL: The Army has determined from its actual experience that ports of embarkation must be operated by personnel of the military service including civilian employees of the Government. So you operate it, don't you?

Mr. KREBILL: We control the movement of traffic moving— 562

Commr. MITCHELL: Who controls this stuff?

Mr. KREBILL: Well, I wonder—

Commr. MITCHELL: Can't you answer that? Can't you answer that question?

Mr. KREBILL: The Army controls part of it.

Commr. MITCHELL: Why, of course.

Mr. KREBILL: And Stevenson and Young controls part of it. They operate a commercial trans-shipment operation.

Commr. MITCHELL: Under a contract with the Army?

Mr. KREBILL: Under a permit for the use of the facilities, yes.

Commr. MITCHELL: I don't understand you yet. It sets out that this is controlled by the Army, and that the Army leases to Stevenson and Young.

Commr. PATTERSON: The Army contracts to Stevenson and Young only for labor?

1947, between the southern lines serving Norfolk, i.e., Atlantic & Danville Railway, Atlantic Coast Line Railroad, Southern Railway, Norfolk Southern Railway and Seaboard Air Line Railroad, and Stevenson and Young, Inc., and two supplemental agreements dated February 21, 1949 and August 30, 1949.

(Defendant's Exhibit No. 49, Witness Dilli, was marked for identification.)

The agreement concerns the wharfage, handling and storage of traffic on piers and warehouses at Norfolk known as the Army Supply Base. The original agreement covered only the Atlantic Coast Line Railroad, Southern Railway, Norfolk Southern Railway and Seaboard Air Line Railroad. The supplemental agreement of February 21, 1949 was entered into between the parties to cover an increase in the wharfage charge from 1¢ per cwt. to 1¼¢ per cwt., and an increase in the handling charge from 3¢ per cwt. to 3¾¢ per cwt. The supplemental agreement dated August 30, 1949 modified the prior agreement to include the Atlantic & Danville Railway which was acquired from the Southern Railway subsequent to the original agreement.

The agreement with Stevenson and Young, Inc., is typical of other agreements between the southern lines serving Norfolk and other pier operators acting as agents of the carriers. These agreements are usually drawn up and executed by the Southern Railway and if satisfactory are then executed by the other southern lines at Norfolk.

538 Mr. DIXON: That is all on direct.

Exam. DIAMONDSON: Cross examine.

CROSS EXAMINATION

By Mr. KREBILL:

Q. On Exhibit 49, there is attached to that a map?

A. Yes.

Q. It is similar to the map which is attached to Exhibit No. 33, which has previously been introduced in evidence, and in connection with which the witness stated that the track layout is not exactly as it exists.

Do you wish to make the same statement in connection with the map attached to your Exhibit No. 49?

A. Well, of course, what I did here was reproduce the original agreement, and also had reproduced in a photostatic manner this map which you referred to. If there is any difference between this map and the map that was presented by some other witnesses, which purports to show the present situation, I would say yes.

Mr. KREBILL: That is to perform a labor service in connection with the handling of this traffic. The Army, as the Army, does not perform any service.

Now, Stevenson and Young is also the agent and contractor with the railroads. The railroads perform handling and wharfage on commercial shipments at the Army Base Piers and for the handling service they employ Stevenson and Young under contract.

563 The contract between the railroads and Stevenson and Young does not cover all services. For example, the railroads do not handle—do not undertake to perform handling on bulk traffic or open top car traffic. Now, the Army has all kinds of traffic through there. Box car, open top car traffic, and the contract with Stevenson and Young is to perform the handling of the Army freight.

In order to make the obligation plain as between the various contractors, we have to examine those agreements. The Examiners were somewhat concerned in the payment of wharfage, for example, to Stevenson and Young because Stevenson and Young might not be leasing the pier facilities or furnishing pier facilities in connection with military traffic.

Now, that is taken care of in the contract between the Government and Stevenson and Young by providing that any collection for wharfage or handling which Stevenson and Young performs for the Army, and for which they are compensated by the railroads, will be turned over to the Government.

In other words, it is a bookkeeping transaction.

Commr. KNUDSON: There is a distinction drawn, however, between the contract of the services that Stevenson and Young perform for the Army and the actual control of the piers or pier itself? One is under contract and the other is under a revocable permit. Isn't that the basic distinction?

564 Mr. KREBILL: True. There is a firm contract for this handling service which Stevenson and Young perform. Now, in connection with the permit that Stevenson and Young has in connection with the operation of the terminal facilities as a port operator they are given a fairly fair commitment to the use of a certain portion of it, and that happens to be described by describing a certain portion of the pier, and certain warehouse facilities. However, that is a flexible arrangement and is brought about by the desire of the Government and by the Army at the insistence of the public, we might say, to keep those facilities open for handling of commercial traffic, commercial freight.

Now, Stevenson and Young as terminal operators can count on having a part of those facilities available for them, so when they make arrangements with commercial shippers for performing a trans-shipment service they will have the facilities to do it.

Q. You would be willing to accept the tracks as shown on Exhibit 3?

A. May I see the exhibit, please? I am not familiar with the tracks. I don't think there is any question about Exhibit 3. I suggest you ask counsel.

Mr. DIXON: Yes, that is all right.

Mr. KREBILL: That is all.

539 Exam. DIAMONDSON: Are there any further questions?

Mr. DIXON: Nothing.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

Mr. DIXON: Mr. Examiner, we offer Mr. Dilli's Exhibits 44 to 49, inclusive.

Exam. DIAMONDSON: Any objection? If not, Exhibits 44 through 49 are received in evidence.

(Defendants' Exhibits 44 to 49, incl., Witness Dilli, were received in evidence.)

Mr. DIXON: Mr. Sams.

J. A. SAMS was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. DIXON:.

Q. Will you state your name and occupation, please?

A. J. A. Sams, agent-yardmaster, Norfolk-Pinners Point terminals, Norfolk-Portsmouth, Virginia.

Q. You are the agent-yardmaster of the Southern Railway's terminals at Norfolk?

A. That is true—let me put it this way: Agent-yardmaster, Pinners Point, which is in Portsmouth.

Q. And as such, Mr. Sams, you have supervision over the Southern Railway marine facilities in the Norfolk-Pinners Point
540 area?

A. That is correct.

Q. How long have you been with the Southern at Norfolk?

A. Approximately 35 years.

Q. Since about 1917?

A. 1917.

Q. 1917.

A. Yes.

Q. You have an exhibit which is a map, or chart, showing the Southern Railway's piers at Pinners Point?

A. That is true.

Commr. KNUDSON: They can only count on it as long as the Army wants to allow them to do it? The Army has a string on that pier that they can pull back at any time.

Mr. KREBILL: The Government has always had a string on those piers.

Commr. KNUDSON: And the Army steps in during the Korean situation and asked the Maritime Commission to give these facilities back to the Army and then this public clamor that you talk about arose, and through the Government and public intervention an arrangement was worked out so that the pier operators had the use of the pier under a revocable permit which could be withdrawn by the Army at any time.

Mr. KREBILL: Well, of course, that has always been the arrangement. That was the arrangement before the Army took over, or else the Army never could have gotten possession on May 1.

Commr. KNUDSON: In that respect it differs from a private pier?

Mr. KREBILL: The difference between this facility and the privately operated pier is that the Government does own it, and the Government does have a right to take possession of the pier, evidently, when it chooses as is evidenced by the fact that on April 30, 1951 the Maritime Commission did revoke the permit that Stevenson and Young previously had as operating the facility as a public terminal.

However, I want to make it plain that the pier facilities have been continued to be made available for commercial shipments, and so far as I know there have been no shortage of facilities there for handling the commercial shipments through there. They have moved through constantly. That arrangement, although in the permits and sub permits defines exactly the property that is involved, the record in this case shows that the arrangement is quite flexible.

For example, if Stevenson and Young find that they have use for a portion of the pier facilities which the Army is not using at the time all they do is call the Port Commander on the telephone and ask him if they can use that for the handling of their commercial freight, and if it does not interfere with any Army program that is granted. Still it makes no difference so far as the formal writings are concerned. The permits are not amended by that action.

Commr. PATTERSON: Are you going to tell us how the switching is done on this pier?

Mr. KREBILL: Yes.

Commr. MITCHELL: At the present time they are paying commercial shippers who ship through this port a refund of some kind?

Mr. KREBILL: The railroads?

Commr. MITCHELL: Yes.

Mr. KREBILL: The railroads pay Stevenson and Young for han-

dling, for loading and unloading certain freight which moves through this pier.

Commr. MITCHELL: Is there much of a movement through there?

Mr. KREBILL: I think the movement is fairly substantial as compared with the—

Commr. MITCHELL: And what does the Government want—what the Government wants, you want a special rebate as the Army always wants of the same amount?

Mr. KREBILL: What we want is to be treated the same as a commercial shipper.

Commr. MITCHELL: Just the same?

567 Mr. KREBILL: The same. There are commercial shipments moving through the port. On those commercial shipments Stevenson and Young handles them and is paid by the railroads.

Commr. MITCHELL: Stevenson and Young load your shipments?

Mr. KREBILL: Yes.

Commr. MITCHELL: The Government shipments?

Mr. KREBILL: The Government shipments, correct. The Government does not handle any freight. The Government is down there in a supervisory capacity. It supervises the movement of traffic through the port. It does not handle any of the shipments. It employed the terminal operator who was already at the port for the performance of any physical handling of the freight.

Commr. KNUDSON: Do you have some operations for which you don't employ Stevenson and Young involving classified material, and things of that kind?

Mr. KREBILL: Yes. There was a time when there was a construction project in Greenland, and in connection with this—all I am saying is what is in the newspaper so it is not classified—and there was a construction project going on in Greenland which was being performed by a group of Companies in a sort of a joint venture known as the North Atlantic Constructors.

They brought in their traffic into the Army base and assembled it there, and the same employees of North-Atlantic Constructors
568 who loaded those shipments on the ships for Greenland I understand accompanied those shipments and were at Greenland to perform the unloading. That service I presume was primarily of a heavy machinery type, and was loaded over an LST ramp which the Government had built at that port right alongside the pier that we are talking about.

Now, in connection with the handling of those shipments the Government is not claiming anything. In other words, we recognize that the railroads are entitled to perform service and to perform it by whoever they wish, and that in that instance the Government came in as a volunteer and handled those shipments and not claiming anything with respect to those.

Mr. DIXON: That will be 50, Mr. Examiner.

Exam. DIAMONDSON: That will be identified as Exhibit 50.

(Defendant's Exhibit No. 50, Witness Sams, was marked for identification.)

By Mr. DIXON:

Q. Tell us what that shows. The piers are circled in red.

A. The piers are circled in red, and the slips are identified between the piers.

Q. And it shows the trackage into the piers?

A. That is true.

Q. The first pier near the top is marked "Warehouse No. 4"?

A. That is correct.

Q. That is known as Pier No. 4?

A. That is known as Pier No. 4.

541 Q. And the one in the middle is Warehouse No. 2, which is known as Pier No. 2?

A. That is correct.

Q. And the lower one is Pier No. 1?

A. That is correct.

Q. Is that right?

A. That is correct.

Q. Now, will you just take your prepared statement and read it, Mr. Sams?

A. The Southern Railway Company owns three, covered, deep water, general cargo piers at Pinnars Point in the Norfolk Harbor. These piers, numbered 1, 2 and 4, are in excellent structural condition and may be described as follows:

Pier 1:—This pier is 807 feet long and 186 feet wide. It contains approximately 108,000 square feet of storage space and has four depressed tracks running the length of the pier, with a total capacity of 90 cars. This pier provides berthing space for two vessels without difficulty.

The depth of the water is presently 16 to 20 feet at mean low tide. The pier is presently utilized to capacity in the handling of the interchange between the Southern and the Old Bay Line and for the transfer of merchandise moving to and from Norfolk and Portsmouth. It is the second largest transfer point for the handling of merchandise on the Southern Railway (Lines East).

542 On the average, 84,000 tons of freight are handled through this pier annually. In that connection, it should be pointed out that a great deal more pier space is required in the classification of less carload merchandise than in the handling of the general run of water-borne freight. The handling of merchandise on this pier constitutes the principal reason that the volume of traffic moving over it cannot be increased.

Pier 2:—This pier is 701 feet long and 236 feet wide. It contains 146,000 square feet of storage space and two depressed tracks, with a capacity of 30 cars. The pier will also provide berthing space for two vessels. The depth of the water is also 16 to 20 feet at mean low tide.

Due to the lack of traffic, this pier has not been used for some time past. It is vacant and under the care of a watchman. We estimate the annual capacity of this pier as 184,000 tons of water-borne commerce. Using an average of 25 tons to the car, which is liberal, its annual capacity would be 7,360 cars. I might add that prior to World War II, when the three coastwise lines (M&MT, P&N and Eastern) were in operation, the annual number of cars of water-borne freight handled through piers 1 and 2 ran between 26,000 and 30,000.

Pier 4:—This pier is 807 feet long and 250 feet in width. It contains 180,000 square feet of floor space, with two depressed tracks having a capacity of 36 cars. For some years past this pier
543 has been leased to the Norfolk Tidewater Terminals, Inc.

The present annual volume of tonnage moving over the pier is 78,000 tons, or 3,120 cars. We estimate this figure would be increased to 138,000 tons, or 5,520 cars, without difficulty. The latter figure is based on the fact that a substantial part of the traffic moving over this pier is held on storage. The depth of the water at this pier is 25 to 29 feet at mean low tide.

The pier can accommodate two vessels. In addition to the two tracks previously mentioned, this pier also contains a marginal open track for the handling of bulk freight. This track is presently used in handling the coastwise movement of pig iron in approximate volume of 100,000 tons per year. The pier is equipped with a pipeline system for transferring oils directly from tank cars to ships or from ships to tank cars. This pipeline system is so constructed as to permit of a continuous loading or unloading operation.

At the present time the Southern is handling over its piers at Pinnars Point on an annual basis approximately 162,000 tons of water-borne commerce which, on basis of 25 tons per car, is 6,480 cars. We estimate—we think the estimate is conservative—that we could handle over these three piers on an annual basis 406,000 tons, or 16,240 cars.

The supporting yards of the Southern at Norfolk have a capacity of 650 cars. In addition, we have a large yard at Selma,
544 North Carolina—156 miles from Norfolk—with a capacity of 350 cars. We also have a vacant tract of land, approximately 20 acres in area, on which land warehouses could be constructed, less than a mile distant from our piers.

EXAM. DIAMONDSON: Any cross examination?

Mr. KREBILL: I have no questions.

Exam. DIAMONDSON: Are there any further questions?

Mr. DIXON: No further questions.

Exam. DIAMONDSON: You are excused.

(Witness excused.)

Mr. DIXON: I now offer Exhibit No. 50 in evidence.

Exam. DIAMONDSON: Without objection, it is received in evidence.

(Defendant's Exhibit No. 50, Witness Sams, was received in evidence.)

W. D. DIMMITT was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. FISHWICK:

Q. Please state your name, residence, and occupation.

A. W. D. Dimmitt, 1119 Westover Avenue, Norfolk. I am president of Lambert's Point Docks, Inc.

Q. In what business is Lambert's Point Docks, Inc., engaged?

A. Operating a marine terminal.

Q. Are those terminals owned by the Norfolk and Western
545 Railway Company?

A. Yes, sir.

Q. Would you briefly describe those marine terminals?

A. What sort of a description do you want?

Q. Well, just give me the physical dimensions of the piers.

A. At Lambert's Point there are three piers: S, L and N. Do
you want the dimensions?

Q. Yes.

A. "S" is 550 feet in length; "L" is 1200 feet in length; "N" is
1150. Each one of those piers can berth four ships each.

Q. How about at Sewell's Point?

A. At Sewell's Point there are two piers, 1200 feet. Each one
of them is 100 feet wide.

Q. What is the total storage capacity of those piers?

A. Lambert's Point is 1,580,000 feet. At Sewell's Point there is
385,000 feet.

Q. How much tonnage did you handle over those piers in 1951?

A. 664,000 tons.

Q. Did you hear the testimony of Colonel Weed in this case?

A. Yes, sir.

Q. On the assumption that there were no delays in delivering
cars to and from your piers, by the railroads, and no delays in
handling cargo to and from vessels, because of vessel delays, in

R. A. LITTRELL was sworn and testified as follows:

DIRECT EXAMINATION

By Mr. FISHWICK:

Q. Please state your name, residence, and occupation.

A. R. A. Littrell, Roanoke, Virginia. I am assistant superintendent of transportation of Norfolk and Western Railway.

Q. Mr. Littrell, are you familiar with the rail facilities of the Norfolk and Western Railway in the Norfolk area; and the operations of the Norfolk and Western in that area?

A. I am.

548 Q. Particularly, are you familiar with the supporting yards and tracks that are used in connection with the delivery of cars to and from the Norfolk and Western's Lambert's Point docks?

A. Yes, sir.

Q. Will you briefly describe those yards and tracks?

A. At Lambert's Point we have a very extensive layout for handling coal and merchandise. I will deal strictly with the merchandise.

Q. Yes.

A. In the supporting yards to our merchandise piers, we have a total of 81 tracks, with approximately 23.8 miles on those tracks. There is a car standing capacity on those 81 tracks of 2,001 cars.

Now, in addition to those tracks, we have just recently completed and put into service at Lambert's Point, immediately adjacent to our merchandise piers, a new 30-track classification yard, equipped with all modern facilities, including car retarders, which will be used in the classification of both coal and merchandise traffic.

Also, we have just at about the same time put in service, a new storage yard that is just next to our piers, our merchandise piers, that has a car standing capacity of 600 cars, which can be used for the storage of coal or merchandise traffic.

549 Q. There is testimony in this case to the effect that on an average about 70 to 70 thousand tons of freight is moving into the Army base each month. On the basis of 25 tons per car, that would be about 2500 to 3,000 cars per month. In your opinion, has the Norfolk and Western the track, yard, locomotive, car, and other capacity to deliver 2500 or 3000 additional loads to and from its Lambert Point piers each month?

A. Yes. I consider our facilities and equipment are adequate to handle that additional business.

Mr. FISHWICK: The witness is tendered for cross examination.

Mr. KREBILL: No questions.

Corporation, which brings in sand and marl, and other materials used in the manufacture of cement. I believe that covers the entire group.

Q. Are there commercial terminal operators operating on any of those piers who would be qualified to receive wharfage or
553 handling allowances?

A. None at all, except that the Imperial Tobacco does occasionally handle other traffic for other people than its own, and in that case, and on that traffic they are treated as a commercial operator and are made the allowances.

Exam. DIAMONDSON: Do both types of traffic move over the same pier?

The WITNESS: Yes, sir, all tobacco.

Exam. DIAMONDSON: Did you say all tobacco?

The WITNESS: Yes. Tobacco is what they handle over the pier.

Exam. DIAMONDSON: For other shippers?

The WITNESS: They handle a certain amount for other shippers, as well as their own. On the traffic they handle for other shippers, they are made the allowance.

Exam. DIAMONDSON: But tobacco is the only commodity handled?

The WITNESS: That is right.

By Mr. KREBILL:

Q. You referred to the fact that you had received no proof of exportation on any shipments which have been moved over the Army Base piers since May, 1951, is that correct?

A. Yes.

Q. Do you receive the accomplished bills of lading which are stamped "For export," or stamped so as to indicate that they are
export shipments?

554 A. Yes, sir.

Q. When you bill the finance officer for your freight charges, is the billing made at export rates or at domestic rates?

A. I do not know.

Q. Do you handle Army shipments for export at other ports?

A. We have handled Army shipments at Jacksonville and Charleston, as I recall.

Q. What type of proof of export do you receive at those ports?

A. Those were handled over commercial piers, and we receive the usual type of proof of exportation from the pier operator who is our contract agent, the same as over other commercial piers, in the form of a statement that shows the identity of the car, and the vessel on which it was exported.

Q. Do you think here at Norfolk that there might be some understanding in connection with proof of export with which you are not familiar?

A. Well, it would be some understanding. I wouldn't be familiar with, but I would think our agent here would be, and he is the man from whom I get the information that no such proof has been furnished to him. He is the man it should be furnished to.

Mr. KREBILL: I have no further questions.

Mr. REYNOLDS: I have one on redirect.

555 REDIRECT EXAMINATION

By Mr. REYNOLDS:

Q. Is the traffic handled over the piers of the Imperial Tobacco, and the Jones Coal Storage Company, traffic of a type which would be entitled to wharfage and handling, if handled over public piers at shipside rates?

A. Yes.

Exam. DIAMONDSON: Are there any further questions?

You are excused.

(Witness excused.)

Exam. DIAMONDSON: Do the Defendants have anything more?

Mr. COUSINS: The Defendants rest.

Mr. REYNOLDS: The Defendants rest, Mr. Examiner.

Exam. DIAMONDSON: Does the complainant have anything more to offer?

Mr. KREBILL: No.

Exam. DIAMONDSON: A proposed report will be served in this proceeding.

Do I understand the parties have agreed on the brief date here?

Mr. KREBILL: Yes, I understand that we have.

Exam. DIAMONDSON: What is that date?

Mr. KREBILL: July 1.

Exam. DIAMONDSON: July 1. Very well, briefs will be due July 1, 1952.

There being nothing further, this hearing is closed.

(Whereupon at 4:50 o'clock p.m., the hearing was closed.)

Secretary's Certificate to foregoing transcript omitted in printing.

Commr. KNUDSON: Most of your traffic moves on Section 22?

Mr. KREBILL: There is some evidence of traffic moving on Section 22 quotation. I think with respect to the particular traffic on which wharfage and handling is asked very little of that moved under Section 22 quotations.

Chairman ALLDREDGE: I don't read your complaint here as asking for this allowance on rates charged under Section 22.

Mr. KREBILL: No, the Section 22 quotations either asked for the allowance or not, depending on what the provisions of those section 22 quotations were. In other words, a section 22 quotation describes the service which we are going to get under that 569 section 22 quotation, and if it is only a line haul rate we probably would expect to—

Chairman ALLDREDGE: Will you help us construe your present complaint? Are you asking for this allowance to be applied on traffic moving under rates made or quoted under Section 22?

Mr. KREBILL: Well, that is a difficult question to answer for this reason: Because in the first place I do not understand that very much of that traffic moved under Section 22 quotations anyway.

Chairman ALLDREDGE: If you don't help me I am going to construe your complaint the other way. I construe it as asking only for this allowance under the commercial rates moving under tariffs which provide with shipside delivery. That is the way I construe your complaint. Do you construe it otherwise?

Mr. KREBILL: Well, I think I could answer that question by saying that you are substantially correct.

Chairman ALLDREDGE: Well, I ought to be either right or wrong. Section 22 rates ought to be out of it or in it. One or the other, isn't that right?

Mr. KREBILL: No, for this reason: Section 22 rates are usually negotiated on a pretty individual basis, and those rates specify in the quotation exactly what the service is that is to be performed.

Chairman ALLDREDGE: Well, I don't want to prejudge cases, or get into a question of what is a contract or what isn't a contract. 570 But I am just assuming for the sake of my question here that whether it is a contract or not the agreement that you make under Section 22 takes care of all the incidents of the transportation, and that you are not asking here for us to apply this incident to your section 22 contracts or agreements.

Mr. KREBILL: I don't think I would quarrel too much with what you say.

Commr. MITCHELL: You are not bound by Section 22. The Army doesn't seem to be bound by that, is it?

Mr. KREBILL: The Chairman's question, as I understand—

Commr. MITCHELL: I am not asking you about the Chairman's question. I am asking you whether you claim to be bound by

Section 22, or not? You have a right to revoke it any time you want.

Mr. KREBILL: We have a right to revoke it any time, and the carriers do have a right to revoke it any time they want it.

Commr. MITCHELL: Are you sure about that?

Mr. KREBILL: Yes.

Commr. MITCHELL: You are not bound by 22?

Mr. KREBILL: The Section 22 rates are not really in issue in this case except to the extent if there is any section 22 which substitutes a particular rate for a particular line haul rate, and in which wharfage and handling would be expected—

571 Commr. PATTERSON: Is there any of this spotting of cars under Section 22?

Mr. KREBILL: No.

Chairman ALLDREDGE: To be frank, I am going to construe your complaint, until you prove to me that I am wrong, but quickly, that you only put in issue here the commercial shipside rates.

Mr. KREBILL: I am not going to attempt to disprove that because for two reasons: One, I don't think there are any Section 22 quotations really that involves this traffic.

Chairman ALLDREDGE: You haven't asked us to enforce this allowance against a rate that is not published as a shipside rate?

Mr. KREBILL: No, I don't consider—

Chairman ALLDREDGE: How would we know whether Section 22 rates is made for shipside—

Mr. KREBILL: We don't consider that we bring a Section 22 rate before you for determination.

Chairman ALLDREDGE: You don't see here that you are specifically asking us for reparation? Do you want a decision as to what we find have been the lawful acts of the carrier, or the lawful charges to be made, or allowances to be made, and then let us go from there somewhere else for the reparation?

Mr. KREBILL: Well, we do not consider that there are any line haul rates that are in issue in this case. It is only a handling and wharfage service.

572 Chairman ALLDREDGE: If we find, how do you expect to get the money back from the railroads? Are you going to ask us to issue an order to direct that to be paid?

Mr. KREBILL: I can't answer that.

Chairman ALLDREDGE: You have a general prayer for relief but not a specific prayer for reparation.

Mr. KREBILL: True. We ask for an administrative finding as to what is the fair thing to do with respect to these military shipments. Then under the Transportation Act of 1940 we feel that the adjust-

ments can be made in accordance with the practice which the Commission finds lawful in this case.

Chairman ALLDREDGE: You are not here asking us to enter a reparations order if we hold with you, is that right?

Mr. KREBILL: Correct. I see my time is running out. I wonder if I can ask a question concerning the switching?

There again the switching service we do not consider as really an issue in this case. The switching is handled in substantially the same manner on both commercial and military traffic. The only difference is that the string of cars is brought into the Army base, and they are brought in free and easy without any instructions or directions, or anything, and as a practice the carriers usually telephone and say they have got these cars coming in and where shall we put them, and they are usually assigned a track on which
573 they can drop the cars.

If there happens to be any particular car in that string which is needed right away in the unloading program they may be asked at that time to spot it at a certain place. But the normal practice is that the railroads, the two railroads which serve the base, the Virginian and the Belt, will bring the cars in, the whole string, and drop them in the hold yard.

Commr. PATTERSON: That is where you order them placed?

Mr. KREBILL: Well, there is just a general understanding there that that is where they will be dropped off. Those are the storage yards or hold yards.

Commr. PATTERSON: And sometimes you ask them to make a second movement in the second spotting of these cars?

Mr. KREBILL: We always ask them to make a second movement from that—I should not say always because there are times—let me use the usual practice. The usual practice is that after the string of cars is left in the hold yard then a placement order is given at some later time for placing the car for unloading, and the railroads perform that.

Commr. PATTERSON: Free?

Mr. KREBILL: Free. Now, there are times, and they do the same thing on commercial.

Commr. MITCHELL: Do you think that violates Rule 104?

574 Mr. KREBILL: No, I do not think it does. Because I do not feel that there is any interference there.

Commr. MITCHELL: The hold track, is that a delivery when they put it in the hold track?

Mr. KREBILL: We do not construe that as being delivery at the hold.

Commr. MITCHELL: I will ask you, how long does it stay in that hold track, a day, or week, or until the Army gets a spot?

Mr. KREBILL: The normal practice is that they will only stay there a few days. On shipments which the Army finds cannot be unloaded

within the free time allowed under the demurrage tariffs that the shipment will be unloaded—

Commr. PATTERSON: You make them come back and make a second placement of that car?

Mr. KREBILL: We don't make them come back.

Commr. MITCHELL: You ask them to come back and make a second placement of the cars?

Mr. KREBILL: What they do when they bring out the string of cars the train crew drops the cars in the hold yard and then the same crew proceeds down to the station master's yard and picks up placement orders for cars which have been dropped off previously. They proceed to place those cars.

Now, there are times when a particular car on the hold track may be wanted and the Army will spot that car itself if there
575 is no real work.

Commr. PATTERSON: The Army has a couple of switch engines around there, and do their own spotting?

Mr. KREBILL: They do their own spotting on the second spottings, as a normal thing. The record will show that approximately 50 or 60 percent of the cars moving down to the pier move down by railroad power, and that would be on the second movement, or you might call it the movement from the hold yard.

Commr. JOHNSON: Is there a possibility that you have spotted a rail car on which demurrage had accrued?

Mr. KREBILL: No.

Commr. JOHNSON: I construed that there might be such a car that had accrued demurrage and still would have it moved.

Mr. KREBILL: What I intended to say that on cars held in the hold yards they will not be held there longer than the free time, and before the free time expires they are brought out and unloaded short of shipside delivery.

Commr. MITCHELL: You specify track for delivery? You call that the hold track, and thereafter you get a second delivery. It seems to me like you are awfully close of violation of Rule 104 as construed by this Commission.

Mr. KREBILL: The first designation of a hold track I would construe as being wholly for the convenience of the railroad. In other words, the train crew knows where to leave them. Now, they
576 can do that without telephoning the Army base. They can bring it right out and see an open track and leave it there without asking anybody.

Commr. PATTERSON: They know where to put the car?

Mr. KREBILL: And then from the hold track they will spot, and they do the same on commercial.

Commr. KNUDSON: Is there anything in this record to show the

relative percentages of commercial as distinguished from Army freight which moves over these piers we are talking about?

Mr. KREBILL: There is quite a comprehensive statement.

Commr. KNUDSON: Is most of the freight Army freight?

Mr. KREBILL: Most of it is Army freight.

Commr. KNUDSON: 75 percent of it is Army freight?

Mr. KREBILL: Probably so.

Commr. JOHNSON: The railroads may do that commercial job themselves. They don't have to have Stevenson and Young, do they?

Mr. KREBILL: Right. They can do it themselves.

Commr. JOHNSON: But they cannot do yours?

Mr. KREBILL: Probably arrangements can be worked out to do it that way.

Commr. JOHNSON: Under these circumstances while they can work through Stevenson and Young, or not, as they please, but they cannot handle your stuff at the moment?

Mr. KREBILL: As of the moment?

577 Commr. JOHNSON: That is what we are talking about, at the moment.

Mr. KREBILL: As of the moment they have to work through Stevenson and Young themselves.

Commr. JOHNSON: Because they made that arrangement, but they can terminate that and do it themselves? So far as you are concerned you handle it yourself and they are excluded?

Mr. KREBILL: If they made arrangements with some one else to do the handling we might make the arrangements with that some one else also.

Commr. JOHNSON: The railroads can't handle your stuff?

Mr. KREBILL: Their agent handles our stuff.

Commr. JOHNSON: I am talking about shipside delivery ordinarily. They can't walk in there and handle your stuff.

Mr. KREBILL: They are doing it.

Commr. JOHNSON: Stevenson and Young is doing it, but Stevenson and Young is not the railroads.

Mr. KREBILL: Stevenson and Young—

Commr. JOHNSON: The facts are that they cannot handle your stuff as they handle commercial stuff, or as they might handle commercial stuff without further negotiations, isn't that right?

Mr. KREBILL: They don't handle it any differently for themselves.

Commr. JOHNSON: You don't require that, handling through Stevenson and Young? That is their own arrangements?

578 Mr. KREBILL: Yes.

Commr. JOHNSON: So they can discharge Stevenson and Young and handle that material themselves any time they please.

Mr. KREBILL: Correct.

Commr. JOHNSON: But they can't do that with you?

Mr. KREBILL: Well, we might make arrangements.

Mr. JOHNSON: You know you might, but you haven't. In those cases that you have quoted they couldn't.

Mr. KREBILL: I think we have to consider the situation as it is.

Commr. JOHNSON: That is exactly what I am trying to keep you considering, as it is.

Mr. KREBILL: Our position is that the railroads are handling the commercial traffic, and there is no substantial difference in the manner in which military traffic is handled.

Commr. JOHNSON: Except that they are not permitted to handle military traffic.

Mr. KREBILL: Well, their agent is handling it.

Commr. JOHNSON: I know, but that is their agent. It happens to be your agent, too, and there is no connection between you and Stevenson and Young and the railroads.

Mr. KREBILL: Stevenson and Young is the railroads' agent for the purpose of loading and unloading traffic, commercial traffic.

Commr. JOHNSON: Have they made arrangements to handle that, or did you make it?

Mr. KREBILL: We have made it.

Commr. JOHNSON: You made it?

Mr. KREBILL: To perform a complete service. That includes a service.

Commr. JOHNSON: Who made the arrangement with Stevenson and Young to handle the commercial traffic?

Mr. KREBILL: The railroads.

Commr. JOHNSON: And who made it with Stevenson and Young to handle military traffic?

Mr. KREBILL: As I understand—

Commr. JOHNSON: Who made the arrangement with Stevenson and Young to handle the military traffic, you or the railroads?

Mr. KREBILL: We had to do it because—

Commr. JOHNSON: I know. I asked you who did it?

Mr. KREBILL: The Army did.

Commr. JOHNSON: They hired Stevenson and Young to handle military traffic?

Mr. KREBILL: Yes, sir.

Commr. JOHNSON: The railroads hired them to do commercial traffic?

Mr. KREBILL: And there is no reason in the world why they should not handle both the military and the Commercial.

Commr. JOHNSON: I want to know the facts. I don't want to know the reasons.

580 Mr. KREBILL: I would like to reserve the other minute, if I have one, for reply.

Chairman ALLDREDGE: Mr. Cousins.

ORAL ARGUMENT OF WINDSOR F. COUSINS

Mr. COUSINS: May it please the Commission, prior to May 1, 1951 the Army base was a public terminal operated by Stevenson and Young which was an agent under contract of the several railroads reaching Norfolk.

Now, on May 1 that arrangement was all terminated, as I think the Commission understands, and the Army took over the facilities. The Navy took a part and the Army took a part and a small part was left in the hands of Stevenson and Young to operate as a public terminal handling commercial freight, and still as agent for the railroads.

Commr. KNUDSON: Was that let under a permit or lease?

Mr. COUSINS: They call it a permit.

Commr. KNUDSON: In your brief of exceptions filed on February 16, on page 19, you say: Stevenson and Young's commercial operations as the railroads' agent on piers which are leased or permitted . . .

Are these leased or permitted?

Mr. COUSINS: Well, Commissioner, the document is in the record. They call it a permit. It looks like a lease to me. In any event, Stevenson and Young have possession of a certain flexible portion of the facilities for their own use.

581 Commr. KNUDSON: They have custody for the time being. Isn't that a more accurate way of describing it?

Mr. COUSINS: Correct. Subject to termination at any time and the space varies from time to time as the Army is willing to let them have more or less. That is how I understand it.

I want to inject one point here. So far today we have been talking about the situation in the present tense. That is not so. Stevenson and Young has not had this space since January 1, and as we understand no longer has the operating contract for the Army. I will discuss the case as it was at the time of the hearing.

Commissioner JOHNSON: This case, the United States wants an allowance for those services they perform on their shipments, and the railroads have Stevenson and Young to perform on commercial shipments. That is what this case is about?

Mr. COUSINS: Yes.

Commr. JOHNSON: Any time the Army would release and go through the railroads Stevenson and Young would get that service?

Mr. COUSINS: Yes, sir.

Commr. JOHNSON: And if they refuse to let it go from Stevenson and Young, and say we are going to do it ourselves, you don't give them the allowance?

Mr. COUSINS: Right.

Commr. JOHNSON: They can get it any time they let it go
582 through the ordinary channels of Stevenson and Young?

Mr. COUSINS: Yes.

Commr. JOHNSON: But if they want to do it themselves, you say, all right, if you want to do it we are not going to give you any allowance. Isn't that the case?

Mr. COUSINS: Exactly.

Chairman ALLDREDGE: Wasn't that the other case that went to Court?

Mr. COUSINS: With this distinction: During World War II the public terminal operator was not allowed to have any space for handling of commercial traffic and did nothing for the railroads.

The Army during the war, as covered by the other case, could not have shipped its own military traffic through the terminal just like commercial traffic and have these free services as it can today.

As Commissioner Johnson has said all the Army has got to do is instead of consigning its freight to itself is to put — through Stevenson and Young as a public terminal operator, and it will get that treatment which it calls the same as the other shippers get.

Commr. JOHNSON: That opportunity was not there when those other cases were decided.

Mr. COUSINS: No, because the public terminal operator was not there.

583 Commr. JOHNSON: They had to do it the other way.

Commr. KNUDSON: One way of accomplishing this is to turn the pier back over to Stevenson and Young the same as — under the same leasing arrangement before the Army took over.

Mr. COUSINS: Then the military would be treated exactly like —

Chairman ALLDREDGE: What advantage would the railroad get? If it shifted the method of doing it and you paid the allowance, what difference would — in dealing with it in that manner, than like it is now? What difference would it make to the railroad?

Commr. JOHNSON: The only difference is you would be tending to your own business.

Mr. COUSINS: The difference is what would happen if we did it now? We would be violating any practice, any principle that has ever been established either by the railroads and the Commission. We can't afford to let the extravagant practice of giving away free services to the extent of private facilities.

Chairman ALLDREDGE: You argued that question here before and carried it to the Court?

Mr. COUSINS: Yes.

Chairman ALLDREDGE: Did you win?

Mr. COUSINS: I haven't lost yet.

584 Commr. MITCHELL: I can't follow you on that, this extravagant practice. You would only be paying the Army what you would be paying Stevenson and Young.

Mr. COUSINS: Yes.

Commr. MITCHELL: You wouldn't be out any money.

Mr. COUSINS: That in itself is extravagant. It is a wasteful practice, the free unloading service that railroads give on export freight.

Commr. PATTERSON: Isn't that true with respect to free shipping service?

Mr. COUSINS: Yes.

Commr. MITCHELL: Isn't that equally true with respect to free shipping service?

Mr. COUSINS: Well, now, if the railroads give shippers free shipping services not covered by the rates of course it is wasteful and extravagant, and it is here.

Commr. MITCHELL: You do here in some instances use the Army in the second placement?

Mr. COUSINS: Yes, sir.

Commr. MITCHELL: How do you explain that?

Mr. COUSINS: We just give it to them.

Commr. MITCHELL: You know you just give it to them, but what authority do you have for giving it to them?

Mr. COUSINS: No authority except that we can't be indicted for rebating to the Federal Government.

585 Commr. MITCHELL: I see. You could be indicted if you did to the same thing with respect to private commercial shippers?

Mr. COUSINS: I have no doubt that you would be looking into that if this were a private shipper.

Chairman ALLDREDGE: May I ask you this: You don't dispute the fact that the rates here are shipside rates?

Mr. COUSINS: We don't refer to shipside rates. Export rates contemplate delivery to the vessel.

Chairman ALLDREDGE: That is shipside rates?

Mr. COUSINS: Yes, sir.

Chairman ALLDREDGE: It is not uncommon at all in publishing rates that the railroads have to do quite a few things to meet the uncertainties of shipper departure?

Mr. COUSINS: Yes.

Chairman ALLDREDGE: It is all covered by the line haul rates? Sometimes you hold shipments back considerably short of destination because of the uncertainty of the departure.

Mr. COUSINS: Yes, sir.

Chairman ALLDREDGE: That is a common practice under shipside rates?

Mr. COUSINS: My personal opinion is that you are correct. I am not an authority on that.

Chairman ALLDREDGE: There is nothing unusual about having them stop and move again?

586 Mr. COUSINS: There is nothing whatever in our rate tariffs covering the line haul rates, which you described as shipside rates which says anything about unloading, or providing a wharf. There is no basis in the rate service whatever for providing a shipper with a wharf, and we don't pay allowances to anybody in this business.

Commr. MITCHELL: Who- do you mean by we?

Mr. COUSINS: The railroads. Not for this service.

Commr. JOHNSON: Mr. Cousins, in ordinary practice of allowances the railroad has the right to perform the service if it is a part of a line haul rate, and if they prefer not and can get the consignee or shipper to do it, and if they don't want to do it themselves they will make an allowance, but they don't make allowances where they are prohibited from doing that.

Mr. COUSINS: Right.

Commr. JOHNSON: In other words, it is up to the railroad whether they will perform these services or because of economic reasons or other they will make allowances, but do you make allowances where you are prohibited to do some things?

Mr. COUSINS: No, we do not and neither do we make allowances under any circumstances for this wharfage and unloading service.

Commr. JOHNSON: and—I am asking generally where allowances are involved they are made where you prefer a shipper
587 who is agreeable to doing part of your line haul service yourself, and you make allowance?

Mr. COUSINS: Yes.

Commr. JOHNSON: Do you know any case where you paid allowances where you were prohibited to perform a part of the line haul rate?

Mr. COUSINS: No.

Chairman ALLDREDGE: You are not mixing up inland terminal services with interchange services between carriers?

Mr. COUSINS: No.

Chairman ALLDREDGE: It seems to me you are.

Mr. COUSINS: There is no interchange service involved in this case.

Chairman ALLDREDGE: Aren't there quite a few port facilities in this country that the railroads serve that they can't enter at all, and they make shipside rates? Isn't that true at Mobile, New York, and all around this country?

Commr. KNUDSON: Are you inhibited or limited in any way by security regulations in your operations on these particular piers? If your operating convenience disturbed at all?

Mr. COUSINS: We have no operating convenience under Army control.

Commr. KNUDSON: You do for the Commercial shipments that move over these piers?

Mr. COUSINS: The Army does not interfere with that, according—

* * * * *

Commr. KNUDSON: Are there any security regulations governing the workmen who can be on those piers and things of that kind that could place any limitation whatever on your commercial operation?

Mr. COUSINS: This record does not indicate that there are now. The old record does. Now, Mr. Chairman, if I may come back to your question, now that I have had time to think of the answer, there is no interchange with carriers involved in this case.

Chairman ALLDREDGE: That is what the port is down there for, isn't it?

Mr. COUSINS: We have no dealings with the ships that carry this traffic. This traffic is consigned to the Army.

Chairman ALLDREDGE: You know good and well what those ports are there for, to facilities—

Mr. COUSINS: Mr. Chairman, no other shippers would get export rates except the Government if the Army handled their business under the tariff provisions like other shippers.

Chairman ALLDREDGE: If the Army turned it loose on you you have got to do something to get it.

Mr. COUSINS: There is lots of shippers that handle their business like the Army. There are hundreds of private piers in this country, and they don't get this service when they operate their piers.

Commr. PATTERSON: They may process it or do something else with it.

589 Mr. COUSINS: As the record shows that they do. This case is presented as a Section 6 case. That is shown very clearly in the record at page 298, and it is covered at length in the complainant's exceptions that the real issue is section 6.

The Complainant says that since the railroads hold out to operate a public facility with Stevenson and Young as their agent that that tariff provision covers their traffic even though they have this other private arrangement. The Examiners voted the tariff provisions on sheet 9 upon which the complainant relies, and I submit to the commission that by no stretch of the imagination can you contrue those tariffs as holding out to perform this service on traffic which the owner controls as to which Stevenson and Young has control of neither the freight nor the facilities.

I want to refer to a little of the complainant's testimony. Unless the Commission asks me a question I am not going to say anything in my argument about defendant's testimony because I can make

my whole case on the complainant's testimony and in my notes I make no reference whatever to the very complete defense testimony that we put in.

I want to refer to the testimony of witness Farrell, Complainant's witness, the former General Manager of Stevenson and Young, and the man who carried out this unloading contract with the Army. He, better than anybody else, describes some 590 of the differences between his operation as a public terminal operator and what he did for the Army, and I am going to try to run through this briefly.

At page 220 Mr. Farrell testified that on commercial traffic placement was ordered by Stevenson and Young. On military traffic placement, was ordered by the Army.

Page 221, as to the commercial traffic he acts as a terminal operator, and on military traffic he acts as a labor contractor.

Page 229, that Army freight loses its identity as export commerce in passing through the pier, and that if he handled as public terminal operator would be subject to the same conditions under which the Army handles it he didn't think it would be entitled to the free unloading services. That is the interpretation.

With respect to this identity of freight he answered Government Counsel, his own witness—this is not cross examination, and they are talking about what happens to identity of this freight as it passes over the facilities, and after some prior explanation he comes at page 230 to say this: That in some instances this freight loses its identity. Mr. Krebill asked him, what are those. Answer: As in the case where things are proposed this N.A.C. cargo, for instance, comes in here carload after carload and handled. It is unloaded by carpenters. The panels are put into crates and the crates go up on the hill and God knows what cars they come out of. That is what he says about it, the man who handles the freight.

591 Chairman ALLDREDGE: All that would lose its identity, wouldn't it, the coal, gravel, sand, grain?

Mr. COUSINS: That kind of freight is not subject to these privileges at all under these tariffs.

Chairman ALLDREDGE: It is done at some ports.

Mr. COUSINS: Not under—those commodities are excluded from the privileges that we are discussing in this case.

Chairman ALLDREDGE: I happen to know that fundable material does flow through these ports of the United States under shipside rates and it loses its identity.

Mr. COUSINS: If it did it could not meet the tariff requirements.

Chairman ALLDREDGE: It might not meet your requirements.

Mr. COUSINS: The same witness at 240: I am the railroad. The shipper cannot touch this waste as it passes through the public

facilities. He says, Under his contract he unloads for the Army, and to the extent of that generally, that is what he does for us.

He went on to say that unloading for the army was a far more complex operation than what he did for the railroads. That is at page 245. And he said, it wasn't because of volume alone, and he pointed out at page 249 to 251. That prior to the Army occupation volume of commercial at times was just as heavy as volume of Army is now. So volume wasn't the answer, it was the complexity of the operation, and the difference between what he does for the two parties is measured by his compensation.

He is paid 75 cents per ton for what the complainant says are the same services they pay him \$2.87 a ton, and at page 248 he wouldn't think of handling this Army traffic for us at our established rate if he had to handle it the way he has to handle it for the Army.

Now, I have said that the Section 6 issue is the real one that they rest their case on here. I want to support that a little bit by referring to the testimony of Witness Broz, which brings us down to a closer agreement than we were in the old case.

Mr. Broz was the Chief Traffic and Tariff witness for the Government. Page 377 he admitted that the railroads pay no allowances on this kind of business. At page 378, that we perform these services only on public piers. At page 413, that the reasonableness of rates is not involved — this case. And as Counsel confirmed that on page 515 of the record. That is a distinction from a prior case. One reason that the reasonableness of rates is not involved is that as Mr. Broz pointed out on page 378 that the line haul carriers that make the rates are not involved in this port service. They have nothing to do with it. He said he admitted that the rates themselves do not include these free services.

As I stated to the Chairman a few minutes ago. He said that the rates, the line haul rates have been made on the basis of the considerations other than these port services. That is at page 385, and again at 389, and he pointed out that in 1920 when these free practices were first accorded at Norfolk there was no change whatever in the preexisting port rates.

Commr. MAHAFFIE: How does this export rate compare with the domestic rate?

Mr. COUSINS: Lower. Norfolk gets the Baltimore export rates, and of course its domestic rates are generally higher.

Commr. MAHAFFIE: You understand that the complainant wants the 75 cents that you pay the contracting firm, or wants the full amount that the Army pays the contracting firm?

Mr. COUSINS: I understand he asks only what we pay our contractor. He asks only he be treated by shippers who use that.

Commr. MAHAFFIE: That might contemplate unloading of free freight which he pays more for.

Mr. COUSINS: The railroads couldn't possibly—the only solution whatever to this complaint is to give the Army an allowance.

Commr. MAHAFFIE: Mr. Krebill, I will ask you, are you asking the 75 cents, or a larger figure?

Mr. KREBILL: We are only asking the same amount which is paid for the commercial traffic.

594 Mr. COUSINS: There is also an extra 25 cents for the wharfage. The 75 cents is for the unloading and we pay our operator 25 cents for furnishing the wharf.

Now, I cite 138 to 139 for the testimony where I said that the complainant admitted that we couldn't do this service, and that an allowance would be the only practical solution.

I want to talk just a little about the law because that really is important in this proceeding. There have been at least 100 cases decided by this Commission between 1929 and now which are precisely in point with the issues here, and I don't think it will take me more than two minutes to review those cases to the Commission.

I will give shortened citations because they are in our brief.

In the Norfolk Port Commission case versus Chesapeake & Ohio Railway Company, 159 I.C.C. 169 (1929), the Commission required a railroad to maintain the same port rates as other railroads, but not the wharfage and handling services. This was a clear holding that export rates are not unreasonable under Section 1 or discriminatory under Section 2 when they do not include the port services.

In Borough of Edgewater, New Jersey versus Arcade & A.R. Corporation, 280 I.C.C. 121 (1951), The Commission reached the same result, i.e., it prescribed the port rates but did not require the free services. With respect to a wharfage allowance, the Commission has twice followed the Norfolk Port Commission case.

595 Interchange of Freight at Boston Piers, 253 I.C.C. 703 (1942), Patterson versus Aberdeen & R. R. Co., 266 I.C.C. 45 (1946).

In M'Cormick Warehouse Co. v. Pennsylvania R. Co., 191 I.C.C. 727 (1933), the Commission declined to permit the free handling of port traffic where the freight came into the custody of the owner or his agent. This case was followed in Rukert Terminal Corporation v. Baltimore & O. R. Co., 283 I.C.C. 5, 286 I.C.C. 485 (1952).

These cases could not have been so decided if Sections 1 or 2 required the port rates to include the unloading of cars.

In three cases dealing with the Port of Newark, the Commission has held that the port services may lawfully be restricted to public

piers, and it has made clear that the issue arises under Section 3, not Sections 1 and 2. *City of Newark v. Pennsylvania R. Co.*, 182 I.C.C. 51 (1932); *Newark New Jersey Chamber of Commerce v. Pennsylvania R. Co.*, 206 I.C.C. 555 (1935); *Weyerhaeuser Timber Company v. Pennsylvania R. Co.*, 229 I. C. C. 463 (1938).^e

In these three cases, the Commission reached three different results, finding for the complainant in the first case, for the railroad in the second case, and dismissing the third case on a different ground, but it applied the same principle consistently upholding the distinction between public and private terminal facilities and declining to find the line haul rates in violation of Sections 1 or 2 because the port services were not granted.

596 The Commission's decision in the prior U. S. Case, finally reported in 269 I. C. C. 141, following the prior rulings.

Commr. KNUDSON: In any one of these cases was the traffic commercial and government moving over the same pier?

Mr. COUSINS: No. Excuse me, Mr. Commissioner, I have no doubt the Government was moving over those piers but as commercial freight. Government owned freight.

Commr. KNUDSON: In this case we have commercial and Army moving over the same pier.

Mr. COUSINS: Yes, sir.

Commr. KNUDSON: And these cases that you site, was there one pier reserved for commercial and another for Army in the same port district?

Mr. COUSINS: Not Army.

Commr. KNUDSON: Well, who?

Mr. COUSINS: The issue of freight owned by the pier operator was involved in those cases which is the same as our case.

Commr. KNUDSON: Well, except this waste. As I understand, it has two kinds of traffic moving over exactly the same pier?

Mr. COUSINS: And in the Weyerhaeuser case there were two kinds of traffic moving over the same facilities. That owned by Weyerhaeuser and that owned—and that of its public consumer. It wasn't Army, but it was private freight.

597 Commr. KNUDSON: Well, the question is narrowed somewhat, where you have a difference of a few feet on the same set of plank boards constituting a pier, and one reserved for commercial and the other for Army.

Mr. COUSINS: I don't see any difference from the situation where a pier operator uses the same pier for both kinds, his own and his customers, and we never give him these services on his own freight.

Commr. KNUDSON: Now, I go back to my previous question as to whether there were any limitations on your operating convenience for commercial purposes or for Army purposes, either one, on this pier that we are talking about in this case?

Mr. Cousins: I think the record just—Mr. Farrell, the public terminal officer said that he wasn't soliciting any more public freight because the Army hadn't allowed him enough room, and in-ferred with his operations as giving him no place to warehouse it; and he was letting the business dry up gradually because of that interference.

The only other interference we get is in the switching as shown in the record where the Army locomotives are running all over the place performing intraplant switching, and even moving our traffic, and in the ordinary Ex Parte 104 situation that would be definitely interference.

In conclusion I would like to say one word about the Examiner's proposed report. I am too old a hand here to think that because

I praise the report that that will carry any weight with the
598 Commission, when it knows the report is in my favor. If I could disassociate my remarks between the results of the report, the recommendations, and not discuss them, and as to the manner in which the report is written I would like to say that this is an unusually lucid, orderly, and comprehensive proposed report, and I think if the Commission will read the report it will have a very good understanding of the record. I thank you.

Chairman ALLDREDGE: Mr. Krebill.

REBUTTAL ARGUMENT BY MR. RAYMOND KREBILL

Mr. KREBILL: In the half minute which I have I think there is one point I can stress and that is the private nature of these facilities which Mr. Cousins argued.

The facts will show that the same facilities are public facilities, and all of the cases which involve the performance of handling by the railroads on private piers turned on the point that it just wasn't reasonable to expect the railroads to come onto a private pier, perform some service in connection with that. Here the situation is different. There the railroads are already there. They are handling traffic of a public nature over the very same facilities. The same labor gang handle both the military and the commercial shipments. They may handle them interchangeably right at the same time.

Commr. JOHNSON: How do you explain what it costs you
599 to handle your stuff with the same people, and what it costs the railroads to handle it through the contractor, 70 cents as against \$2.80 or some such?

Mr. KREBILL: The record shows and we will not dispute that for a minute, that in connection with the military shipments there are certain complications, and it is a complicated method of handling, and I think that Mr. Farrell said that they just couldn't possibly handle military traffic at the same time—at the same cost, rather,

that they can handle it for the commercial traffic because the military expects some additional services which are necessary in unloading the freight at destination. It requires that maybe they be stacked in a certain way. It is still in a supervisory nature and to the extent that it is more costly to the freight handler to handle the military traffic, the military pays for it, too, and all we are asking is that we be accorded the same privileges and allowances which are given to the commercial traffic.

Commr. MITCHELL: What you are asking is that we require the railroad to pay in dollars the amount that it costs them to unload the commercial freight? You are not asking—you are asking for an allowance from the rail of dollars to apply upon what it costs you because of the extravagant manner, or the manner in which you unload?

Mr. KREBILL: That is correct. Of course in connection with your commercial shipments there the commercial shipper asks 600 for additional services, too, sometimes, which the railroads do not perform, such as storing for some length of time on the piers. The railroads don't undertake to do that so Stevenson and Young bills the shipper for that additional service just like he bills us for the additional services. I thank you.

Chairman ALLDREDGE: That concludes the arguments and the Commission will adjourn.

(Whereupon, at 11:20 a. m. the oral argument in the above entitled case was concluded and the Commission adjourned.)

600a

EXHIBIT 1

DEPARTMENT OF THE ARMY
Office of the Chief of Transportation
Washington 25, D. C.

TCCTS-CH/ 31 March 1951

Mr. V. P. Kelly, General Freight Traffic Manager, The Chesapeake & Ohio Railway Co., 823 East Main Street, Richmond 10, Virginia.

Mr. F. S. Baird, Vice-President, in Charge of Traffic, The Norfolk & Portsmouth Belt Line Railroad, Norfolk, Virginia.

Mr. H. E. White, Jr., President & General Manager, The Norfolk & Portsmouth Belt Line Railroad, Norfolk, Virginia.

Mr. C. B. Walker, Ass't to the Vice-President, Southern Railway System, Washington 13, D. C.

Mr. W. W. Wolford, Ass't Freight Traffic Manager, Seaboard Air Line Railroad Co., Norfolk 10, Virginia.

Mr. W. B. Hopkins, Ass't Freight Traffic Manager, The Pennsylvania Railroad Co., Broad Street Station Building, Philadelphia 4, Pennsylvania.

Mr. J. S. Brauch, Ass't Traffic Manager, The Virginian Railway Co., Norfolk 10, Virginia.

Mr. C. H. Ware, Traffic Manager, The Norfolk Southern Railway Co., 1200 East Main Street, Norfolk, Virginia.

Mr. E. C. Hicks, Jr., Ass't Freight Traffic Manager, Atlantic Coast Line Railroad Co., Wilmington, North Carolina.

Mr. L. D. Curtis, Vice-President, The Atlantic & Danville Railway, 115 West Tazewell Street, Norfolk, Virginia.

Gentlemen:

This letter refers to the subject of the conference which you attended on 26 March 1951, namely, the reestablishment of the Army Terminal, Norfolk, Virginia, and the handling and wharfage allowance pertaining thereto.

The Department of the Army is considering the reactivation of the Army Terminal, Norfolk, Virginia, using certain of the facilities presently occupied by Stevenson and Young. Furthermore, as was indicated to your du—the conference, certain Army Engineer activities are already using a portion of the facilities under lease arrangements. The terminal services for this engineer activity are being performed by a contractor, although, I believe, he is not presently named as a terminal operator in the carrier's tariffs.

601 During World War II these facilities were operated by the Department of the Army and the Army performed its own terminal services. As you know handling and wharfage was not generally allowed by the carriers. This resulted in the well-known Norfolk case before the Interstate Commerce Commission, which is still in the courts.

The Department of Defense and the Department of the Army desire to obtain the benefit of the handling and wharfage allowances, which are normally made on shipside rates. During the conference, you indicated that you could not interpret your tariffs to grant the allowance if the terminal should be taken over and operated as an Army Base as was done during the war. You further indicated that you would be unwilling to amend your tariffs to grant the allowance or to reduce the shipside freight rate accordingly, or to issue a Section 22 Quotation to accomplish either purpose.

The Department of the Army is considering taking over the facility, operating it under its custody, but with the terminal services actually being performed by a contractor. This is similar to the manner in which the present engineer operations are being performed.

It will be appreciated if you will advise at the earliest practicable date whether you would be willing to amend your tariffs to grant the allowance to both the contractors involved, i.e., the present contractor performing the terminal services for the Army Engineer and such contractor as is selected to perform the services for the Army Transportation Corps, should it take over certain other portions of the facilities, or to issue a Section 22 Quotation which accomplish the same result. An alternative which would should consider is the performance of the terminal services of handling by the carrier, leaving only the allowance of wharfage to be made.

For your information in considering our request, it may be practicable that the Army can arrange to allow some commercial cargoes to pass through the terminal.

Sincerely yours,

E. B. GRAY,
Colonel, TC,
Assistant.

602 THE ATLANTIC AND DANVILLE RAILWAY COMPANY

115 West Tazewell Street
Norfolk 10, Va.

April 27, 1951

L. D. Curtis
Vice-President

File 6525-A

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation
Department of the Army
Washington, 25 D. C.

Dear Colonel, Gray:

Reference is made to your joint letter of 31, March, 1951, file TCCTS-CH/551.2 in connection with conference held in your office on the 26, March regarding the reestablishment of the Army Terminal, Norfolk, Virginia and the allowance of wharfage and handling in connection therewith.

This subject has been given most serious consideration by the Atlantic & Danville Railway Company since the conference referred to above and we have arrived at the conclusion that we cannot legally make such an allowance to the Government for the handling of government owned property where the wharfage and handling is performed either by the Army or by its duly authorized agent or contractor.

I regret exceedingly that the circumstances in the subject case are such as to prevent our acceding to a request of the Army.

Yours very truly,

L. D. CURTIS.

603 ATLANTIC COAST LINE RAILROAD COMPANY

Freight Traffic Department
Wilmington, N. C.

April 27, 1951.

In Your Reply Refer to File Fam-12602-9

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Sir:

Please pardon my delay in replying to your joint letter of March 31st in regard to reactivation by the Army of the Army Base Terminal at Norfolk, Va., which delay has been occasioned by the very thorough consideration that we have had to give the matter.

It seems quite clear that under the plan of operation which you have outlined, namely, through a contractor acting under control of the Army, control by the railroads of the terminal operation would be impracticable, if not impossible, so that the situation is actually no different from that with which the railroads were faced during World War II. Under all the circumstances, the Atlantic Coast Line Railroad cannot make an allowance to either the Government or its contracting terminal operator for performance of handling services or for furnishing wharfage facilities. I regret that we have not been able to give you definite advice sooner.

Yours very truly,

(Signed) E. C. HICKS, JR.,
Assistant Freight Traffic Manager.

Copies:

Mr. J. P. Kelly, GFTM, C&O Ry, Richmond 10, Va.
Mr. F. S. Baird, VP, N&W Ry, Roanoke, 17, Va.
Mr. H. E. White, Jr., P&GM, N&PBL RR, Norfolk, Va.
Mr. C. B. Walker, AtoVP, Sou Ry, Washington 13, D. C.
Mr. W. W. Wolford, AFTM, SAL RR, Norfolk 10, Va.
Mr. W. B. Hopkins, AFTM, PRR, Philadelphia 4, Pa.
Mr. J. S. Branch, ATM, Vgn Ry, Norfolk 10, Va.
Mr. C. H. Ware, TM, NS Ry, Norfolk, Va.
Mr. L. D. Curtis, VP, A&N Ry, Norfolk, Va.

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UNITED STATES OF AMERICA VS.

604

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

J. P. Kelley

General Freight Traffic Manager

Richmond, Va., April 30th, 1951.

TM 542-28

cc 524-22

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Colonel Gray:

In connection with the contents of your joint letter of March 31st, file TCCTS-CH/-551.2, addressed to the traffic officers of the railroads serving Norfolk, Va., inquiring as to whether or not wharfage and handling allowances would be made to the U. S. Army in the event it should take over for operation the so-called Army Base Piers 1 and 2, formerly operated by Stevenson & Young, Inc., as public pier and warehouse facilities.

As you know, the Chesapeake & Ohio Railway does not today make allowances to the public pier operators for wharfage and handling on export, import, coastwise, intercoastal freight, and we are unwilling to deviate from our past practice in this respect should the U. S. Army take over and operate the pier facilities under discussion.

Yours very truly,

(Signed) H. P. KELLEY,
General Freight Traffic Manager.

605

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

J. P. Kelley

General Freight Traffic Manager

Richmond, Va., May 23rd, 1951.

TM 542-28

Colonel, T. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Sir:

Yours of May 11th, file TCCTS-C 548.3, with further regard to your letter of March 31st, 1951, and my reply of April 30th, relating to the United States Army occupying and operating Army Base

Terminal Piers 1 and 2, Norfolk, Virginia. Have given your request further consideration.

As advised you in my response of April 30th, the Chesapeake & Ohio Railway Company does not today deputize any of the public or private pier operators on the Norfolk side of the harbor as its agents in the handling of export, import, coastwise or intercoastal freight, and as the occupation of those piers by the U. S. Army under the conditions which you cited in the conference, and in your letter of March 31st, will further restrict the use of those facilities as to commercial traffic, I cannot see any new conditions brought about thereby under which the Chesapeake & Ohio Railway Company would change its past policy. My response is that our company is not agreeable to allowing any wharfage and handling charges to the United States Army, or its agents, on such traffic as would be under the control of the U. S. Army handled over these piers, and passing completely from the possession of the rail carrier upon delivery.

Very truly yours,

(Signed) J. P. KELLEY,
General Freight Traffic Manager.

606

SUBJECT: Army Base—Reactivation

NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY
Norfolk 10, Virginia

H. L. White, Jr.
President and General Manager

April 25th, 1951.

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Colonel Gray:

With reference to your joint letter of 31 March 1951, file TCCTS-CH/551.2, in connection with conference held in your office on March 26th, regarding the reestablishment of the Army Terminal, Norfolk, Virginia, and the handling and wharfage allowance pertaining thereto.

This Company performs switching service only between the nine (9) trunk line railroads serving the Port of Hampton Roads and the industries and terminals located on its line and does not participate in the allowance for wharfage and handling at the terminal which

it serves, since such allowances are made by the trunk line railroads which handle the traffic to and from the Port of Hampton Roads.

Yours very truly,

(Signed) H. L. WHITE, JR.,
President and General Manager.

cc:

Mr. F. S. Baird, VP-T, N&W Rwy., Roanoke, Va.
Mr. J. S. Branch, ATM, Vgn. Rwy., Norfolk, Va.
Mr. E. C. Hicks, Jr., ATM, ACL RR, Wilmington, N. C.
Mr. W. B. Hopkins, AFTM, PRR, Philadelphia, Pa.
Mr. J. P. Kelly, GFTM, C&O Rwy., Richmond, Va.
Mr. C. B. Walker, AVP, Sou. Rwy., Washington, D. C.
Mr. W. W. Wolford, AFTM, SAL RR, Norfolk, Va.
Mr. L. D. Curtis, VP, A&S Rwy., Norfolk, Va.

607 SUBJECT: Army Base Terminals, Norfolk, Va.: Operations
as Hampton Roads Sub-Port of New York Port of
Embarkation

NORFOLK AND WESTERN RAILWAY COMPANY
Roanoke 17, Virginia

Roanoke, April 27, 1951.
106-3

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Colonel Gray:

Your letter March 31, file TCCTS-CH/551.2, requesting that the Norfolk railroads give consideration to granting you wharfage and handling allowance or, in the alternative, the performance of the handling service and a wharfage allowance under the plans outlined in your letter.

Under the circumstances outlined, the Norfolk and Western Railway is not in position to make an allowance to the government or its contractor for wharfage and handling nor to undertake to perform the handling of the traffic and make a wharfage allowance thereon.

I think it will appeal to you that the suggested plans of operation are in practical effect quite similar to the situation during World War II where the Interstate Commerce Commission did not see fit to grant wharfage and handling allowances and where that decision has thus far been adhered to in the courts.

Yours very truly,

(Signed) F. S. BAIRD,
Vice President.

608 SUBJECT: Army Base Terminals, Norfolk, Va.; Operations
of Hampton Roads Sub-Port of New York Port of
Embarkation

NORFOLK AND WESTERN RAILWAY COMPANY

Roanoke 17, Virginia

F. S. Baird

Vice President in Charge of Traffic

May 28, 1951. w
106-3

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Colonel Gray:

Again referring to your letter May 3, TCCTS-C 548.3, requesting that we advise with the least practicable delay the conditions under which we would allow wharfage and handling charges at Norfolk, which query I understand is directed toward the operation of the Army Base Terminals.

We have given careful consideration to the matter of making allowances to the Army or its agent for the handling of export freight at the Army Base. We feel such action would not be proper as the freight in question would pass out of the rail carriers' possession. Under these circumstances I believe there are no conditions under which we would be in position to make an allowance to the Army, Navy or the agents thereof for wharfage and handling of freight over the Army Base terminals.

If the terminal could be operated as a common terminal just as it was by Stevenson & Young prior to the entry of the Army into the picture and if there were a bona fide holding out and handling of commercial freight, then it seems to me the operator would be entitled to wharfage and handling. I understand it is not practicable to so operate the Army Base under existing conditions.

Yours very truly,

(Signed) F. S. BAIRD,
Vice President.

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UNITED STATES OF AMERICA VS.

609

NORFOLK SOUTHERN RAILWAY COMPANY

C. H. Ware
Traffic Manager

Norfolk 10, Va., April 27, 1951. VJ
File No. -A

Col. E. B. Gray,
Colonel, TC Assistant,
Department of the Army,
Transportation Corps,
Washington 25, D. C.

Dear Sir:

Further in connection with my letter of April 16th, acknowledging your joint letter of March 31st, file TCCTS-CH/551.2, concerning reactivation of the Army Terminals at Norfolk, Va.

I have carefully studied the plans for operating the Army Base Piers as outlined in your letter of March 31st, and regret that the Norfolk Southern cannot make an allowance to the Government or to its contractor for wharfage and handling performed at the said piers by the Government or its contractor; nor can our railroad perform the physical handling of the traffic and make a wharfage allowance thereon, since the traffic would not be under control of the railroads but under control of the Army.

Yours very truly,

(Signed) C. H. WARE,
Traffic Manager.

610

NORFOLK SOUTHERN RAILWAY COMPANY

C. H. Ware
Traffic Manager

Norfolk, Va., May 29, 1951.
File No. 32480-A

Colonel E. B. Gray, T. C. Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington, D. C.

Dear Sir:

Replying to your letter of May 14th, 1951, file TCCTS-C 548.3. Upon thorough consideration of the question propounded in your letter, I wish to advise that I can conceive of no condition under which the Norfolk Southern Railway could justify making an allowance to the Army for wharfage and handling services at the

Army Base Terminals at Norfolk, Va., inasmuch as the traffic leaves control of the railroad prior to the performance of these services at the terminal.

Sincerely yours,

(Signed) C. H. WARE,
Traffic Manager.

611

THE PENNSYLVANIA RAILROAD

Traffic Department

Pennsylvania Station—30th Street
Philadelphia 4, Pa.

April 6, 1951
File RF 2582-1
Desk J

Department of the Army
Office of Chief of Transportation
Washington 25, D. C.

Atten: Col. E. B. Gray

Gentlemen:

This will acknowledge receipt of your letter of March 31 in regard to the conference held in your office on March 26 concerning reactivation of the Army Terminal at Norfolk, Va.

The matter will be given prompt consideration and we shall inform you further in regard to it.

Yours very truly,

(Signed) W. B. HOPKINS,
Asst. Freight Traffic Manager.

DIB:jrm

cc—Mr. J. P. Kelly, GFTM, C&O Ry., Richmond, Va.

Mr. F. S. Baird, VP-T, N&W Ry., Roanoke, Va.

Mr. H. E. White, Jr., Pres., N&PBL Ry., Norfolk, Va.

Mr. C. B. Walker, AVP, Sou. Ry., Washington, D. C.

Mr. W. W. Wolford, AFTM, SAL RR, Norfolk, Va.

Mr. J. S. Branch, ATM, Vgn. Ry., Norfolk, Va.

Mr. C. H. Ware, TM, NS Ry., Norfolk, Va.

Mr. E. C. Hicks, Jr., ATM, ACL RR, Wilmington, N. C.

Mr. L. D. Curtis, VP&TM, A&D Ry., Norfolk, Va.

THE PENNSYLVANIA RAILROAD

Traffic Department

Pennsylvania Station—30th Street
Philadelphia 4, Pa.

April 27, 1951
File RF 2582-1
Desk B

Department of the Army
Office of Chief of Transportation
Washington 25, D. C.

Atten: Col. E. B. Gray

Gentlemen:

This is in further response to your letter of March 31 in regard to the possibility of making an allowance covering wharfage and handling in the event of re-activation by the Army of the Army Terminal at Norfolk.

This has been given consideration and it has been concluded that we must inform you that, since control of the terminal operation by the railroads is prevented by the operation either direct by the Army, or through a contractor under Army control, the situation will be similar with that existing during World War II when the Terminal was operated directly by the Army, the Pennsylvania Railroad cannot make an allowance to the Government nor to its contractor nor can it undertake to perform the handling of traffic which would not be under its control.

Yours very truly,

(Signed) W. B. HOPKINS,

Asst. Freight Traffic Manager.

cc—Mr. F. S. Baird, V.P., N&W RR, Roanoke, Va.

Mr. J. P. Kelley, FTM, C&O Ry., Richmond, Va.

Mr. H. E. White, Jr., Pres., N&PBL RR, Norfolk, Va.

Mr. C. B. Walker, Asst. to V.P. Southern Ry., Washington, D. C.

Mr. W. W. Wolford, AFTM, SAL RR, Norfolk, Va.

Mr. J. S. Branch, ATM, Vgn., Norfolk, Va.

Mr. C. H. Ware, TM, NS RR, Norfolk, Va.

Mr. E. C. Hicks, AFTM, ACL RR, Wilmington, N. C.

Mr. L. D. Curtis, V.P., A&D RR, Norfolk, Va.

613

SEABOARD AIR LINE RAILROAD COMPANY

Freight Traffic Department

Norfolk, Va., April 27, 1951. b
File 9355—C

Colonel E. B. Gray
Office of the Chief of Transportation
Department of the Army
Washington 25, D. C.

Dear Sir:

This will acknowledge receipt of your joint letter of March 31 1951, addressed to the traffic officials of the several railroads serving Norfolk, in regard to consideration being given by the Army to the reactivation of the Army Terminal at Norfolk, and requesting that we give consideration to the making of an allowance covering wharfage and handling under the plan of operation you mentioned. As I understand it, the Department of the Army is considering taking over the facility, operating it under its custody, but with the terminal services being performed by a contractor under Army control and supervision.

Under the plan of operation of the terminal, it is clear that the operation through a contractor under Army control would necessarily preclude control of the terminal operation by the railroads, hence the situation presented becomes no different from that present during the War when it was operated directly by the Army. In the circumstances I must advise you that the Seaboard cannot make an allowance to the Government or its contractor, nor itself undertake to arrange to perform the handling on traffic which would no longer be under its control.

Yours very truly,

(Signed) W. W. WOLFORD,
Assistant Freight Traffic Manager.

380

UNITED STATES OF AMERICA VS.

614

SEABOARD AIR LINE RAILROAD COMPANY

Freight Traffic Department

Norfolk, Va., May 25, 1951. b

File 9355-C

Colonel E. B. Gray
Office of the Chief of Transportation
Department of the Army
Washington 25, D. C.

Dear Sir:

This has reference to your letter of May 14, 1951, file TCCTS-C 548.3, with reference to your prior letter of March 31, 1951, and my reply of April 27.

You now inquire as to "the conditions under which you will allow the wharfage and handling charge at Norfolk, Virginia." You will doubtless recall that at the conference held in your office March 26, in your opening statement you said that under any plan of operation of the terminal it should be understood that it would be under the control and supervision of the Army. In the circumstances, I know of no conditions under which we could make an allowance to the Army to cover its wharfage and handling expenses encountered in the handling of its traffic over this terminal.

Yours very truly,

(Signed) W. W. WOLFORD,
Assistant Freight Traffic Manager.

615

SOUTHERN RAILWAY SYSTEM

Freight Traffic Department

Washington 13, D. C.

April 27, 1951. b

C.

Carl B. Walker
Assistant to Vice President
Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army
Washington 25, D. C.

Dear Colonel Gray:

Further in connection with your joint letter of March 31st file TCCTS-CH/551.2, in regard to the reestablishment of the Army Terminal, Norfolk, Va., and the handling and wharfage allowance pertaining thereto.

Your proposal has had our careful consideration, and the South-

ern Railway is not willing to make allowances for wharfage and handling to the Army or its contractors involved in the handling of Government traffic over the Army Terminal at Norfolk, Va., nor are we willing to perform the terminal services ourselves and make a wharfage allowance on this traffic.

Yours very truly,

(Signed) C. B. WALKER.

Copies to—

Mr. J. P. Kelley, GFTM, C&O Ry., Richmond, Va.
Mr. F. S. Baird, VP, N&W Ry., Roanoke, Va.
Mr. H. E. White, Jr., P&GM, N&PBL RR, Norfolk, Va.
Mr. W. W. Wolford, AFTM, SAL RR, Norfolk, Va.
Mr. W. B. Hopkins, AFTM, PRR, Philadelphia, Pa.
Mr. J. S. Branch, ATM, Vgn Ry., Norfolk, Va.
Mr. C. H. Ware, TM, NS Ry., Norfolk, Va.
Mr. E. C. Hicks, Jr., AFTM, ACL RR, Wilmington, N. C.
Mr. L. D. Curtis, VP, A&D Ry., Norfolk, Va.

616

SOUTHERN RAILWAY SYSTEM

Freight Traffic Department
Washington 13, D. C.

May 31, 1951. w.
3.

Carl B. Walker

Assistant to Vice President

Colonel E. B. Gray,

TC Assistant, Office of the Chief of Transportation,
Department of the Army, Washington, D. C.

Dear Colonel Gray:

The inquiry contained in your letter of May 14, 1951, file TCCTS-C 548.3, has received careful consideration. You are advised that Southern Railway will not make allowances for wharfage and handling to the Army or its contractors in the handling of Government traffic over the Army Terminal at Norfolk, Virginia. I can think of no conditions under which it would be willing to make such allowances.

Sincerely yours,

(Signed) C. B. WALKER.

617

THE VIRGINIAN RAILWAY COMPANY

Terminal Building
Norfolk 10, Va.

J. S. Branch

Assistant Traffic Manager

April 27, 1951.

File No. C-4396-N

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Colonel Gray:

Referring further to your joint letter March 31, regarding reactivation of the Army Base at Norfolk as an Army terminal and requesting consideration on the part of the carriers to making allowances for wharfage and handling on waterborne traffic:

From the plan of operation outlined in your letter, and in the light of subsequent developments, it is clear that the operation of the facility will be completely under Army control and the carriers will have no jurisdiction over physical services or functions of a terminal operator. We must, therefore, decline to make any allowances to the Army or its contractors, nor could the Virginian undertake to arrange to perform any terminal services on the traffic.

Your very truly,

(Signed) J. S. BRANCH,
Assistant Traffic Manager.

JSB: dw

618

THE VIRGINIAN RAILWAY COMPANY

Terminal Building
Norfolk 10, Va.

May 24, 1951.

File No. C-4396-AB

Colonel E. B. Gray, TC Assistant,
Office of the Chief of Transportation,
Department of the Army,
Washington 25, D. C.

Dear Colonel Gray:

Referring to yours May 14, 1951, file TCCTS-C 548.3:

We have carefully considered the question of wharfage and handling allowances on military traffic moving through the Army Base facilities at Norfolk, Virginia, and can envision no conditions under which the Virginian Railway would extend such allow-

ances to the military or its agents on this traffic, which would not be under the control or supervision of the carriers.

Yours very truly,

(Signed) J.S.BRANCH,
Assistant Traffic Manager.

JSB:df

619

EXHIBIT 2

Permit No. MA-111

PERMIT FOR USE AND OCCUPATION OF CERTAIN PORTIONS OF MARITIME ADMINISTRATION TERMINAL, NORFOLK, VIRGINIA, BY DEPARTMENT OF THE ARMY.

Permit granted by Maritime Administration of the Department of Commerce to Department of the Army for the use, occupation, administration, operation, and maintenance of certain portions of the Maritime Administration Terminal, Norfolk, Virginia, commencing at midnight, April 30, 1951:

Whereas, the President of the United States by Executive Order dated June 27, 1924, transferred the possession and control of certain property owned by the United States in or near the City of Norfolk, Virginia, and known as the Quartermaster Intermediate Depot, U.S.A., from the War Department to the United States Shipping Board;

Whereas, the custody of and functions relating to said property were transferred to the Secretary of Commerce by Executive Order dated June 10, 1933 and issued pursuant to Act of Congress of March 3, 1933 (47 Stat. 1517), and thereafter to the United States Maritime Commission by the Merchant Marine Act of 1936, and thereafter to the War Shipping Administration pursuant to Executive Order 9054 dated February 7, 1942, and thereafter to the United States Maritime Commission by the Naval Appropriations Act of 1947 (P.L. 492 79th Cong.) and thereafter to the Maritime Administration of the Department of Commerce by Reorganization Plan No. 21 of 1950.

Now, therefore,

Witnesseth:

Effective at midnight April 30, 1951 and upon the terms and conditions hereinafter set forth, the Maritime Administration grants to the Department of the Army the use, occupancy, administration, operation, security, protection and maintenance of the following property, to wit:

- A. Those Portions of Tracts I and II which are described on a map on file in the Department of the Army and entitled "War Department, Quartermaster Corps, Construction Service—
620 Army Supply Base, Norfolk, Va.—Boundary Survey" dated

March 1, 1923, revised May 1, 1923 and March 26, 1923 and marked "Plan No. 6238-236 as 561.57 Acres (Tract I) and 78.06 Acres (Tract II) as are outlined in red on map entitled "Army Base Terminal, Norfolk, Va." revised September 1946, attached hereto and by this reference made a part hereof and as hereinafter described as bounded by:

Tract I:

1. The counterline of Pier 2 and adjacent bulkhead and a line projected easterly from the bulkhead of Pier 2 along the northerly edge of 5th Street to the fence bounding the area permitted to the Department of the Navy by the U. S. Maritime Commission under date of June 16, 1942; as agreed upon by Colonel Weed representing the Department of the Army, and Rear Admiral Thurber representing the Department of the Navy in meeting of 16 March 1951; Hampton Boulevard; and the fence line along the south property line, Capps Creek, Lafayette River, and Elizabeth River as shown on the aforementioned "Boundary Map", and:

Tract II:

2. All of Tract II in the possession of the Maritime Administration at the time of granting of this Permit extending from Hampton Boulevard to the Virginian Railway connection;

B. All improvements, consisting of docks, piers, warehouses, wharves, dwellings and garages or parts thereof set forth in the schedule entitled "Exhibit A"; all fixed or movable equipment now located on or used in connection with the property described in Section A hereinabove/or set forth in the schedule entitled "Exhibit B"; and all supplies and material now located in the property permitted as set forth in the schedule entitled "Exhibit C"; these schedules being attached hereto and by this reference made a part hereof.

C. All easements, rights of way, riparian rights and other rights, estates or interests therein or pertaining to the real and personal property hereby permitted to the Department of the Army.

621 D. The right to use in common with the grantor herein and others any roads, tracks, sewers, water mains or electric lines heretofore or hereafter reserved to the Maritime Administration or permitted by it to others which premises are shown on the plat, as necessary for use and occupancy of the permitted real and personal property.

Terms and Conditions

First: Said premises and property shall be used by the Department of the Army for military purposes in connection with the loading and discharging of persons and property into and from vessels,

railroad cars, trucks, and/or other vehicles, and the assembling, handling and storage of cargo, material, equipment and supplies and for such other purposes not herein specifically provided for, which may be approved by the Maritime Administration;

Second: The Department of the Army specifically recognizes and agrees that this Permit merely transfers to the Department of the Army the temporary right to use and occupy the said premises and property during the continuance of this Permit and in accordance with the terms hereof, and that nothing herein contained shall be construed to transfer the permanent control of said premises and property to the Department of the Army, but that the permanent control thereof shall, except for this permit, remain in the Maritime Administration unless otherwise ordered by the President.

Third: The use and occupation of said premises and property by the Department of the Army shall continue until the military need for such use and occupation ceases, but in any event not later than six (6) months after the termination of the present emergency declared by the President of the United States on December 18, 1950, or until the expiration of any extension of such time as may be granted by the Maritime Administration, at which time this Permit shall cease and terminate; and the Department of the Army shall return thereupon the said premises and property and shall surrender the use and occupation thereof to the Maritime Administration; provided, however, the use and occupation of said premises and of the property by the Department upon giving notice in writing to the Administrator, Maritime Administration at least sixty (60) days in advance of the date of such termination, in which event this Permit shall terminate on the effective date of such notification and shall thereafter be of no further force and effect.

622 Fourth: The Department of the Army shall not make any major structural improvements, alterations or additions to said premises and property, nor erect building, structures or fixtures thereon except with the consent in writing of the Maritime Administration, or its duly authorized representative, expressly approving the plans for such improvements, alterations, buildings, additions, structures or fixtures, and fixing the terms and conditions for the making of any such improvements, alterations, additions, buildings, structures, fixtures, etc.

Fifth: (a) The Department of the Army shall pay all expenses of whatsoever nature incurred, or necessary to be incurred, in connection with its use and occupation of said premises and property during the existence of this Permit, and shall, at its own cost and expense, maintain and keep said premises, including but not limited to, the electric light and power, fire protection, sprinkling and telephone system during the existence of this Permit, in good repair and working order.

(b) The Department of the Army shall, at its own cost and expense, maintain and keep in good repair all of the fixed and movable equipment set forth in the aforesaid attached schedule entitled "Exhibit B".

(c) The Department of the Army shall, during the existence of this Permit, at its own cost and expense, perform all dredging necessary in connection with its use of the premises and property and (upon the termination of this Permit, shall, at its own cost and expense, deliver and surrender the premises to the Maritime Administration with depths of water over the entire slip or water area (the right to use which is granted by this Permit) not less than the depths shown on the schedule entitled "Exhibit D", attached hereto and by this reference made a part hereof.

Sixth: (a) Upon surrender of possession of the premises pursuant to the Provisions of the third condition hereof, the Department of the Army shall, if, and as required by the Maritime Administration, restore the premises, both real and personal property (except supplies and materials listed in "Exhibit C") to the condition existing at the time of entry by the Department of the Army under this Permit, reasonable and ordinary wear and tear and damage by the elements or damage by circumstances over which the Department of the Army has no control, excepted (damage resulting from derailments shall not be considered due to ordinary wear and tear): Provided that the Department of the Army shall have the right and privilege of making a cash settlement with the Maritime Administration in lieu of its restoration obligation, if any.

623 (b) The supplies and materials listed in "Exhibit C" shall be returned, either in kind or by substitution, satisfactory to the Maritime Administration, upon surrender of possession of the premises by the Department of the Army.

Seventh: Joint Inventory and Condition Reports of all real and personal property and depths of water over the entire slip or water area, including in this Permit shall be made; said reports to reflect the condition of the property at the commencement date of this Permit. The Joint Inventory and Condition Report pertaining to the real property shall be identified as "Exhibit A". Such report pertaining to the fixed and movable equipment shall be identified as "Exhibit B". The report pertaining to the supplies and materials shall be identified as "Exhibit C", and the report pertaining to the depths of water shall be identified as "Exhibit D".

Eighth: The Maritime Administration does not assume responsibility for and will not be liable for or pay insurance upon any of said premises and property, or any demurrage, rental, storage charge, or per diem on any vessel or vessels, car or cars, at the piers or on the rails of said premises, and will not be liable for any dam-

age in consequence of any failure to furnish any car or cars, or for any loss of life or property or damage to persons or property on said premises and property, or in any manner whatever except as herein specifically set forth.

Ninth: Authorized representatives of the Maritime Administration upon advance notice and with prior approval of the Commanding Officer, Hampton Roads Sub-Port of Embarkation shall have the right to enter upon and inspect said premises and property or any portion thereof for the purpose of property inspection under the applicable portions of this Permit, which approval shall not be arbitrarily withheld.

Tenth: Upon the termination of this Permit as hereinbefore provided, all fixed repairs, additions, alterations, improvements, buildings and fixtures made to said premises and property by the Department of the Army during the existence of this Permit, and not required by the Department of the Army for use elsewhere, shall become the property of the Maritime Administration without charge. The Maritime Administration shall, however, have the option of requiring the Department of the Army to remove, at the latter's expense, within one hundred and twenty (120) days after the termination of this Permit, any or all such fixed repairs, additions, alterations, improvements, buildings, and fixtures
624 which may then be on the said premises, and the Department of the Army specifically agrees that such allowance is a reasonable time for such removal.

Eleventh: The granting of this Permit and the effective date thereof is expressly contingent upon and subject to the simultaneous granting of a sub-permit by the Department of the Army to the Maritime Administration, for the latter's use and occupation of the following portion of the premises defined upon terms and conditions to be mutually agreed upon:

1. All of the Sections, A, B, C, D, E, F, G, and H of Warehouse No. 5.
2. All of Section C, second floor, Warehouse No. 4.
3. Sufficient land for open storage purposes in connection with Maritime Administration warehouse activities upon the premises to be designated in the sub-permit.

The terms and conditions of such sub-permit shall be based upon the understanding that the Maritime Administration will vacate the space outlined in this Section provided (1) the Department of the Army shall demonstrate an urgent military requirement for its use and occupation of same, and (2) there is available to the Maritime Administration alternate commercial or other space suitable to

the Maritime Administration, and necessary funds in connection with obtaining and utilizing such space.

Dated this 30th day of April 1951.

MARITIME ADMINISTRATION OF THE
DEPARTMENT OF COMMERCE,

By (S.) R. T. McDONALD,
Assistant Secretary.

625

Receipt and Acknowledgment

The undersigned, on behalf of the Department of the Army, hereby acknowledges receipt of the above described premises and property, all subject to the terms and conditions set forth above.

Dated this 30th day of April 1951.

(S.) F. H. HASTINGS,
Department of the Army,
W. H. Hastings,
Colonel, Corps of Engineers,

(Seal) *Assistant Chief of Engineers for Real Estate.*

Attest:

Approved as to Substance:

(S.) HOWARD J. MARSDEN,
Chief, Division of Ports and Facilities,
Maritime Administration.

Approved as to form:

(S.) F. GREEN,
Acting Solicitor,
Maritime Administration R. M. W.

Attachments:

- 1 Plan
- 4 Exhibits

626

SUB-PERMIT

Whereas the Department of Commerce (Maritime Administration) by Permit to the Department of the Army commencing at midnight, April 30, 1951, authorized the Department of the Army to use, occupy, administer, secure, protect and maintain certain portions of the Maritime Administration Terminal at Norfolk, Virginia; and,

Whereas said permit provides, among other things, for the grant-

ing by the Department of the Army to the Maritime Administration of a sub-permit covering the use of certain portions of the permitted premises; and

Whereas the military designation of said permitted facilities in Hampton Roads Sub-Port of Embarkation, Virginia.

Now, therefore, in accordance with and pursuant to the aforesaid permit the Department of Commerce; (Maritime Administration) is hereby granted a sub-permit, terminable by the Secretary of the Army as hereinafter provided, to use and occupy the following described portions of the Hampton Roads Sub-Port of Embarkation, Norfolk, Virginia:

1. All of Sections, A, B, C, D, E, F, G, and H of Warehouse No. 5 and all of Section C, second floor, Warehouse No. 4, as shown on the map entitled "Army Base Terminal, Norfolk, Va.", revised September 1946, attached to the aforesaid permit from the Maritime Administration to the Department of the Army.

2. Open Storage space—all portions of the open storage space actually occupied by storage of the Maritime Administration within the area North of South Street and West of Hampton Blvd., said area being shown on the above-mentioned "Army Base Terminal, Norfolk, Va." map. The exact description of the specific portions of said area shall be determined by visual inspection by the Commanding Officer, Hampton Roads Sub-Port of Embarkation, or his representative, within 30 days from the effective day of this sub-permit and shall be attached hereto and become a part hereof.

3. The Maritime Administration; its officers, agents, 627 licensees, leasees, contractors, invitees, etc., having business in the portion of the Maritime Terminal property being simultaneously permitted by the Maritime Administration to the Department of the Navy shall be granted ingress and egress to the "Navy Property" across the "Army Property" subject to such security and operational rules and regulations as the Commanding Officer, Hampton Roads Sub-Port of Embarkation, or other competent military authority, may from time to time prescribe.

This Sub-Permit is granted subject to the following provisions and conditions:

1. That the term of this sub-permit shall be coextensive with that of the aforesaid permit from the Maritime Administration to the Department of the Army, provided however, that the use and occupancy by the Maritime Administration of any property author-

ized by the Department of the Army hereunder shall be terminated and such property vacated by the Maritime Administration upon determination by the Department of the Army that there is an urgent military requirement for the use and occupancy thereof, provided there is available to the Maritime Administration at such time or times alternate commercial or other space suitable to the Maritime Administration, and necessary funds in connection with obtaining and utilizing such space.

2. It is mutually agreed that the Maritime Administration will continue to be responsible for the commercial goods, sub-leases, and other contractual arrangement relating to Maritime Administration storage located within the Hampton Roads Sub-Port of Embarkation (but not the space) until such time as such goods are removed and/or such sub-leases and/or other contractual arrangements are terminated and the property vacated.

3. Subsequent to the effective date hereof the Department of the Army agrees to make available to the Maritime Administration for commercial operations (exports and import trade only) such portions of said area covered by the permit from the Maritime Administration to the Department of the Army (piers, bulkhead, warehouses, buildings, lands, etc.) as the Department of the Army may determine are not required for its immediate use, on such terms and conditions and for such periods as may be determined by the Department of the Army.

4. That the use and occupation of the said sub-permitted premises shall be without cost or expense to the Department
628 of the Army, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the premises, and subject also to such reasonable rules and regulations as he may from time to time prescribe.

5. That the sub-permittee shall pay the cost of producing and/or supplying any utilities and other services furnished by the Department of the Army or through Department of the Army facilities for the use of the sub-permittee.

6. That if for any reason it should be deemed necessary or expedient for the Department of the Army to perform functions and/or render services which are the responsibility of the sub-permittee, the said officer may, in lieu of materials required for the performance of said functions and/or for the rendering of said services. In addition to furnishing personnel and/or materials, the sub-permittee shall reimburse the Department of the Army for any costs incurred by the Department of the Army in connection with said functions and/or services, such as for supervision and/or equipment furnished. Selection of such personnel will be subject to the approval of the said officer.

In Witness Whereof I have hereunto set my hand by authority of the Secretary of the Army and under the direction of the Chief of Engineers this 30th day of April 1951.

(S.) W. H. HASTINGS,
Wallace H. Hastings,
Colonel, C. E. Office,
Chief of Engineers Real Estate.

629 TCHRP-CO 633

24 August 1951

Stevenson & Young
Norfolk Army Base
7737 Hampton Boulevard
Norfolk, Virginia

Gentlemen:

It is understood that you are serving as lessees and/or agents of the Maritime Administration in connection with certain parts of the property known as the Norfolk Army Base which areas of the property under the agreement you have with the Maritime Administration are being utilized to conduct commercial operations. In accordance with certain provisions of the sub-permit issued by the Department of the Army to the Maritime Administration for use by the latter of certain parts of this property when available for commercial operations, you are hereby informed that the following spaces, in the property permitted by the Maritime Administration to the Department of the Army for its occupancy and use, are allocated to the Maritime Administration for commercial operations, namely, Sections "B", "C", "G", "H" and "J" of Warehouse No. 3, also the inner-berth, north side of Pier No. 1.

In addition to the foregoing and in accordance with a letter written by Mr. E. E. Ferrari, who is on Mr. Knudson's Staff in Washington, to Mr. E. O. Jewell, General Manager, Norfolk Port Authority, the Maritime Administration is allocated an additional berthing space on the Army side of this property until the 31 of October 1951 for commercial operations.

As a matter of record in this matter, it is also set out that in Warehouse No. 3, Section "J", there is an area of approximately 6,400 square feet which has been recently occupied by the Old Dominion Stevedoring Corporation. That Firm is paying rent for the indicated space and collection thereof is your responsibility under the agreement with the Maritime Administration. Also Section "K" of Warehouse No. 3 is in use by your Firm for storage and repair of materials handling equipment. Part of that space would be allocated in accordance with your Terminal Operations

Contract with the Hampton Roads Port of Embarkation, however, the remainder would be chargeable to such other operations 630 as may be conducted under your lease or agency agreement with the Maritime Administration. Conditions similar to those applying in the case of the Old Dominion Stevedoring Corporation are also in effect with the Southern Stevedoring, Inc., who occupy a space in Section "L", Warehouse No. 4; also the Atlantic and Gulf Stevedoring, Inc., who have a space in Section "G", Warehouse No. 2.

Since Warehouse No. 3 is contiguous to Pier No. 1, it would appear practicable for the indicated spaces in that building to be utilized for commercial water-front warehousing operations. It will be noted that a termination date is not stipulated in connection with the indicated warehouse sections.

In Mr. Ferrari's letter, it is set out that the terminating date for the Army pier spaces allocated to the Maritime Administration for commercial operations is October 31, 1951. In order to facilitate your commitments as representatives of the Maritime Administration in the handling of commercial operations, it is indicated that at this time I can foresee no urgent need by the Hampton Roads Port of Embarkation for the berthing space you have been using on the north side of Pier No. 1 subsequent to October 31, 1951. Regarding any additional berthing space in that part of the property permitted to the Department of the Army for military transshipping operations, I am unable to determine that such space will be available to you subsequent to the 31st of October 1951.

In any event however, be assured that I shall make every effort possible to avoid any interruption to commercial transshipping operations and/or commitments undertaken by you in your capacity as lessees and/or agents of the Maritime Administration.

Very truly yours;

T. J. WEED,
Colonel, TC
Commanding

Copy furnished:

Maritime Administration
Department of Commerce
Washington 25, D. C.
ATTN: Mr. H. J. Marsden

631 TCHRP-CO-633

24 August 1951

Honorable Porter Hardy, Jr.
House of Representatives
Washington 25, D. C.

Dear Mr. Hardy:

This will acknowledge receipt of your letter of 17 August 1951, regarding the use for commercial purposes of certain pier space and warehouse sections in the Norfolk Army Base. A communication has been transmitted to the Firm of Stevenson & Young, who for commercial operations are serving as representatives of the Maritime Administration, informing them of the availability of five sections in Warehouse No. 3. This building is situated in the part of the Base that was permitted to the Department of the Army. The west end of Warehouse No. 3 is contiguous to Pier No. 1. On the north side of that pier berthing space has been allocated to the Maritime Administration and is now in use for commercial operations by their lessees and/or agents, the firm of Stevenson & Young.

The general situation causes it to be impracticable to indicate more clearly what the demands will be subsequent to October 31, 1951. Therefore, I am unable to impart definite information regarding a genuine requirement by the Army for these spaces during the months immediately succeeding October 1951. In any event, I shall do everything possible to avoid disturbing the arrangements or commitments made by the Maritime Administration and their authorized agents to utilize the space assigned to them for commercial purposes. In this connection, I have reference only to that part of the Base which has been permitted to the Department of the Army for occupancy and operation in accomplishing the transshipment of personnel and cargo required to augment or support our overseas forces.

It has been a pleasure to be of assistance in this matter and I hope you will let me know whenever it is felt I can be of any further aid.

Sincerely,

T. J. WEED,
Colonel, TC
Commanding

August 17, 1951

Colonel T. J. Weed

Commanding Officer
Hampton Roads Port of Embarkation
Hampton Boulevard
Norfolk, Virginia

Dear Colonel Weed:

I am sure that you are aware of my interest in recent efforts to work out a proper arrangement under which a portion of the Army Base facilities may be continued in use for commercial port activities. Ever since the first intimation that elements of the defense establishment were interested in taking over these facilities it has been my position that, to the extent these facilities are not absolutely essential for military use, they should be available for commercial use.

I have had many discussions with the Maritime Administration, the Navy and Mr. Knudson's office about this matter. It has been my purpose to keep abreast of developments with respect to it as well as I could.

Mr. Knudson sent me a copy of Mr. E. E. Ferrari's letter of August 13 addressed to Mr. Jewell. In that letter three points of agreements and arrangements were specifically set out, but I recognize a high element of indefiniteness which in itself will mitigate against Commercial utilization. With only temporary assignments of pier space agreed to by both the Army and the Navy, commercial use is going to be most unsatisfactory if not impossible. Additionally, the indefiniteness about warehouse units and the inaccessible location of such units to service the loading and discharging of cargoes is a serious impairment to commercial utilization.

I note in Mr. Ferrari's letter a statement to the effect that local officials have a full understanding of the problems and have evidenced a spirit of cooperation. On this basis the letter proposes that these matters be worked out on the local level between the parties concerned in the future. Thus it is indicated that space assignments beyond the dates already agreed on will be
633 worked out between you, Fifth Naval District Officials and representatives of the Commercial operators.

I think you know of my eagerness to cooperate in all steps essential for our national defense. At the same time I am not unmindful of the commercial needs, and I shall insist that reasonable arrangements be worked out in connection with the Army Base piers whereby the space for commercial use is more definite. I see no reason why that space should not be contiguous, and I want to ask that you lend your efforts toward developing an

under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

d. Negotiations.

(1) Upon the filing of the statements and data required by paragraph c. of this Article, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon
655 prices for services to be rendered on and after the effective date of the price revision. Negotiations for price revisions under this Article shall be conducted on the same basis, employing the same types of data, including, without limitation, comparative prices, comparative costs, and trends thereof, as in the negotiation of prices under a new Department of Defense contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to services rendered on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

e. Disagreements. If, within thirty days after the date on which the statements and data are required pursuant to paragraph b. of this Article to be filed (or such further period as may be fixed by written agreement), the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article 21 (Disputes), and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this Article.

f. Payments. Until new prices shall become effective in accordance with this Article, the prices in force at the effective date of the price revision shall be paid upon all services performed, subject to appropriate later revisions made pursuant to paragraph d. or e. of this Article.

g. Retroactive Changes in Wages or Working Conditions. In the event of a retroactive wage adjustment the Contractor or the Contracting Officer may request an adjustment in the prices fixed in this contract, and such adjustment will be made to the extent equitable. Such request by the Contractor shall be made within thirty days of such retroactive wage adjustment and shall be supported by (i) an estimate of the changes in cost occasioned by the retroactive wage adjustment, (ii) complete information upon which such estimate is based, and (iii) a certified copy of the collective bargaining agreement, arbitration award or other document evidencing the retroactive wage adjustment. Subject to the foregoing limitation as to the time of making a request hereunder, completion or

understanding which will have a degree of permanence which does not exist.

I am sending a copy of this communication to Admiral Davis and to Mr. Jewell. I shall want to be kept advised of the progress made at the local level and, in view of the fact that the space assignment to which you have agreed expires at the end of October, I think the matter should receive prompt consideration.

Sincerely yours,

PORTER HARDY, JR.

August 13, 1951.

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Mr. E. O. Jewell,
General Manager,
Norfolk Port Authority,
500 Board of Trade Building,
Norfolk 10, Virginia.

Dear Mr. Jewell:

Reference is made to your letter of July 3, in connection with the Army Base in Norfolk, Virginia.

This matter was placed on the agenda of the Interagency Committee on Port Utilization at its meeting held July 6, and at that time a subcommittee composed of the Department of Defense and the Department of Commerce was formed to make an on the scene investigation of this matter. As a result of the findings submitted by this subcommittee, the following actions were taken by the Interagency Committee on Port Utilization.

1. The Department of the Navy has agreed to make available to commercial use one full berth on the north side of Pier 2 until December 31, 1951.

2. The Department of the Army has agreed to make available for commercial use two berths at Pier 1, one berth definitely indicated as the inshore berth on the north side. This arrangement is made for a 'three-months' period, August, September and October. The Army will indicate to you at the end of September what arrangements will be made for the months of November, December and January. In addition, the Department of the Army has indicated that at any time space is available on these facilities consideration will be given to its use by commercial activities.

3. As a result of arrangements worked out between the U. S. Maritime Administration and the Department of the Army, five warehouse units will be made available for commercial use.

After the committee had made a physical examination of the facilities a conference was held with the following in attendance: Colonel T. J. Weed, Commanding Officer, Hampton Roads Port of

termination of this contract shall not affect or impair the Contractor's right under this paragraph. Such adjustment shall be by mutual agreement between the Contracting Officer and the Contractor. The adjusted prices, and the manner of making adjustments with respect to services theretofore paid for, shall be incorporated in an amendment to this contract to be executed by the Contractor and the Contracting Officer. In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, such disagreement will be resolved in accordance with the Article in this contract entitled "Disputes." The Contractor shall give written notice to the Contracting Officer of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. Such notice shall be given within twenty days after such request, or if request has occurred prior to execution of this contract, at the time of execution of this contract.

HRPE. CY/52

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EXHIBIT 5

CAR, TRUCK, AND BARGE LOADING AND UNLOADING AND TERMINAL
OPERATIONS SERVICES

Hampton Roads Port of Embarkation, Norfolk, Va., Installation
Contract No. DA 44-046 TC 42

Department of the Army Transportation Corps Agency

Contractor and Address: Stevenson & Young, Inc., Norfolk Army
Base, Norfolk, Va.

Contract for: Car, Truck, and Barge Loading and Unloading and
Terminal Operations Services.

Place: Norfolk Army Base, and other designated locations in
Hampton Roads Harbor Area.

Effective Date: 1 January 1952.

Expiration Date: 31 December 1952.

Payment: The Finance Officer, U. S. Army at Fort Monroe is
designated as the officer to make payments in accordance with this
contract.

The contract is for general utilization by the Hampton Roads Port
of Embarkation; all calls on the Contractor for services and orders
issued hereunder by the Contracting Officer will contain the certifi-
cate of availability of funds and cite the procurement allotment to
be used in making payment.

This contract is authorized by the Armed Services Procurement

Embarkation, Commander Gatchel, representing Rear Admiral T. E. Hipp, Captain Ells, Area Representative, Mr. G. M. Thompson, Terminal-Warehouse Superintendent, Maritime Administration, Mr. Roy Farrell, Manager, Stevenson and Young, Inc., and Mr. J. H. Devereux, representing the Hampton Roads Maritime Association. **C**

The Committee found that a full understanding of the problems that existed, both for the military and domestic operations, were evidenced by all concerned and that a spirit of cooperation existed.

The committee feels, in view of this understanding that in the future any matters concerning additional space at Hampton Roads facilities can be worked out on a local level between the parties concerned.

The result of this committee action is that more berth and dock space is being made available for commercial use than requested in your letter under reply, and present indications are that additional space will be made available to you from time to time as conditions permit.

Very truly yours,

E. E. FERRARI,

Chairman, Interagency Committee on Port Utilization.

cc: Hon. John S. Battle, Governor, Commonwealth of Virginia, Richmond, Va.

Hon. Porter Hardy, Jr., House of Representatives, Washington, D. C.

Members of Interagency Committee on Port Utilization.

Central Files (2).

Port Utiliz. Div. (2).

636 TERMINAL OPERATIONS & INTRANSIT STORAGE SERVICES CONTRACT

Hampton Roads Sub-Port of Embarkation, Norfolk, Va., Installation
Contract No. DA 44-046-TC-6

Department of The Army Transportation Corps Agency
Contractor and Address: Stevenson & Young TC-6.

Contract for: Terminal Operations & Intransit Storage Services.

Place: Norfolk Army Base, & other designated locations in Hampton Roads Harbor Area.

Effective Date: 1 May 1951.

Expiration Date: 31 December 1951.

Payment: The Finance Officer, U. S. Army, at Fort Monroe, Va., is designated as the officer to make payments in accordance with this contract.

The contract is for general utilization by the Hampton Roads sub-

port of Embarkation; all calls on the Contractor for services and orders issued hereunder by the Contracting Officer will contain the certificate of availability of funds and cite the procurement allotment to be used in making payment.

This contract is authorized by the Armed Services Procurement Act of 1947, Public Law 413—80th Congress, (approved 19 February 1948) and is entered into by negotiation pursuant to Sec. 2(c) (1) of said Act, and Presidential Proclamation 2914.

637 CONTRACT FOR TERMINAL OPERATIONS & INTRANSIT STORAGE SERVICES

This Contract, entered into this 26 day of April 1951, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Stevenson & Young, Inc. a corporation organized and existing under the laws of the State of Delaware (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1. General Scope of the Contract

(a) *General.* The Contractor agrees to furnish all terminal and pier warehouse intransit storage services excluding physical plant facilities (piers, warehouses, etc.); all checking and clerking services in connection therewith; all policing (sweeping and cleaning) services; and such other terminal services (excluding vessel checking and stevedoring; watchmen and guard service; utilities and maintenance of premises service) as may be designated herein, and, in connection therewith, to perform all the duties of a terminal operator in such areas of the Norfolk Army Base or at any pier in or about the Hampton Roads harbor area as may be designated by the Contracting Officer, all as hereinafter more particularly described and upon the terms and conditions hereinafter set forth for the term of this contract, beginning 1 May 1951 and ending 31 December 1951. Services started before and not completed by the expiration date of this contract shall be completed under this contract unless otherwise directed by the Contracting Officer.

(1) *Designation of Service.* The Contracting Officer or his authorized representative will advise the Contractor before the beginning of work (on a monthly basis) and will thereafter promptly confirm in writing the order to perform services. The notice in writing will cite the procurement allotment and the certificate of the availability of funds and will serve as authority for the Contractor to perform services as indicated.

(aa) *Income for Handling Lighters, Railroad Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks and railroad cars under this contract shall be for the account of the Contractor and will be collected by the Contractor; *Provided*, that the Contractor will deduct from invoices rendered to the Government such amounts as are collected by the Contractor in accordance with the provisions herein. The Contractor agrees to exercise every reasonable effort to effect collection of such revenue as is legally due from such other sources. The Contractor will maintain adequate and accurate records to reflect such income collected from sources other than provided for in this contract.

639 STEVEDORE CHECKING & CLERKING SERVICE CONTRACT

Hampton Roads Sub-Port of Embarkation, Norfolk, Va.
Installation

Contract No. DA 44-046 TC-4, Department of the Army,
Transportation Corps Agency

Contractor and Address: Stevenson & Young, Inc.

Contract for: Stevedore Checking & Clerking Services.

Place: Norfolk Army Base and Other Designated Areas.

Effective Date: 1 May 1951.

Expiration Date: 31 December 1951.

Payment: The Finance Officer, U. S. Army at Fort Monroe, Va., is designated as the officer to make payments in accordance with this contract.

The contract is for general utilization by the Hampton Roads Sub-Port of Embarkation: all calls on the Contractor for services and orders issued hereunder by the Contracting Officer will contain the certificate of availability of funds and cite the procurement allotment to be used in making payment.

This contract is authorized by the Armed Services Procurement Act of 1947, Public Law 413—80th Congress, (approved 19 February 1948) and is entered into by negotiation pursuant to Section 2(c)(1) of said Act, and Presidential Proclamation 2914.

640 CONTRACT FOR STEVEDORE CHECKING & CLERKING SERVICES

This contract, entered into this 19 day of April 1951, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Stevenson & Young, Inc., a corporation organized and existing under the laws of the State of Delaware, (hereinafter called the Con-

tractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1: General Scope of the Contract.

(a) *General.* The Contractor agrees to furnish all stevedore checking and clerking services; and such other related services (excluding stevedoring, terminal operations and watching services) as may be designated herein, and, in connection therewith, to perform all the duties of a stevedore checking contractor on any vessel which the Contracting Officer may designate at Norfolk Army Base or at any pier or anchorage in or about the Hampton Roads Harbor area, upon the terms and conditions hereinafter set forth for the term of this contract, beginning 1 May 1951, and ending 31 December 1951. Vessels started before and not completed by the expiration date of this contract shall be completed under this contract unless otherwise directed by the Contracting Officer.

(1) *Designation of Service.* The Contracting Officer or his authorized representative will furnish to the contractor a copy of "Stevedoring Advice Slip" previously furnished to the Army Stevedore Contractor. The copy of the notice in writing will cite the procurement allotment and the certificate of the availability of funds and will serve as authority for the Contractor to perform services on the activity indicated.

641 CAR, TRUCK AND BARGE LOADING AND UNLOADING AND
TERMINAL OPERATIONS SERVICES

Hampton Roads Port of Embarkation, Norfolk, Va., Installation
Contract No. DA 44-046 TC-42 Department of the Army
Transportation Corps Agency

Contractor and Address: Stevenson & Young, Inc., Norfolk Army Base, Norfolk, Va.

Contract for: Car, Truck and Barge Loading and Unloading and Terminal Operations Services.

Place: Norfolk Army Base, & other designated locations in Hampton Roads Harbor Area.

Effective Date: 1 January 1952.

Expiration Date 31 December 1952.

Payment: The Finance Officer, U. S. Army at Fort Monroe is designated as the officer to make payments in accordance with this contract.

The contract is for general utilization by the Hampton Roads Port of Embarkation; all calls on the Contractor for services and orders issued hereunder by the Contracting Officer will contain the certificate of availability of funds and cite the procurement allotment to be used in making payment.

This contract is authorized by the Armed Services Procurement

Act of 1947, Public Law 413—80th Congress, (approved 19 February 1948) and is entered into by negotiation pursuant to Sec. 2(c) (1) of said Act, and Presidential Proclamation 2914.

**642 CONTRACT FOR CAR, TRUCK, AND BARGE LOADING AND UN-
LOADING AND TERMINAL OPERATIONS SERVICES**

This contract, entered into this 16 day of December 1951, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Stevenson & Young, Inc. a corporation organized and existing under the laws of the State of Delaware (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1. General Scope of the Contract

(a) *General.* The Contractor agrees to furnish all terminal and pier warehouse services excluding physical plant facilities (piers, warehouses, etc.); all checking and clerking services in connection therewith; all policing (sweeping and cleaning) services; and such other terminal services (excluding vessel checking and stevedoring; watchman and guard service; utilities and maintenance of premises service) as may be designated herein, and, in connection therewith, to perform all the duties of a terminal operator in such areas of the Norfolk Army Base or at any pier in or about the Hampton Roads harbor area as may be designated by the Contracting Officer, all as hereinafter more particularly described and upon the terms and conditions hereinafter set forth for the term of this contract, beginning 1 January 1952 and ending 31 December 1952. Services started before and not completed by the expiration date of this contract shall be completed under this contract unless otherwise directed by the Contracting Officer.

(1) *Designation of Service.* The Contracting Officer or his authorized representative will advise the Contractor before the beginning of work (on a monthly basis) and will thereafter promptly confirm in writing the order to perform services. The notice in writing will cite the procurement allotment and the certificate of availability of funds and will serve as authority for the Contractor to perform services as indicated.

(2) *Income for Handling Lighters, Railroad Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks and railroad cars under this contract shall
643 be for the account of the Contractor and will be collected by the Contractor; *Provided*, that the Contractor will deduct

from invoices rendered to the Government such amounts as are collected by the Contractor in accordance with the provisions herein. The Contractor agrees to exercise every reasonable effort to effect collection of such revenue as is legally due from such other sources. The Contractor will maintain adequate and accurate records to reflect such income collected from sources other than provided for in this contract.

644 STEVEDORE CHECKING & CLERKING SERVICE CONTRACT

Hampton Roads Port of Embarkation, Norfolk, Va., Installation
Contract No. DA 44-046 TC-41

Department of the Army, Transportation Corps, Agency

Contractor and address: Severson & Young, Inc., Norfolk Army Base, Norfolk, Virginia.

Contract for: Stevedore Checking & Clerking Services.

Place: Norfolk Army Base & Other Designated Areas.

Effective date: January 1, 1952.

Expiration date: 31 December, 1952.

Payment: The Finance Officer, U. S. Army at Fort Monroe, Virginia, is designated as the officer to make payments in accordance with this contract.

The contract is for general utilization by the Hampton Roads Port of Embarkation: all calls on the Contractor for services and orders issued hereunder by the Contracting Officer will contain the certificate of availability of funds and cite the procurement allotment to be used in making payment.

This contract is authorized by the Armed Services Procurement Act of 1947, Public Law 413—80th Congress, (approved 19 February 1948) and is entered into by negotiation pursuant to Sec. 2(c) (1) of said Act, and Presidential Proclamation 2914.

645 CONTRACT FOR STEVEDORE CHECKING & CLERKING SERVICES

This contract, entered into this 18 day of December 1951, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Stevenson & Young, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1. General Scope of the Contract.

(a) General. The Contractor agrees to furnish all stevedore checking and clerking services; and such other related services (excluding stevedoring, terminal operations and watching services)

as may be designated herein, and, in connection therewith, to perform all the duties of a stevedore checking contractor on any vessel which the Contracting Officer may designate at Norfolk Army Base or at any pier or anchorage in or about the Hampton Roads Harbor area, upon the terms and conditions hereinafter set forth for the term of this contract beginning 1 January 1952, and ending 31 December 1952. Vessels started before and not completed by the expiration date of this contract shall be completed under this contract unless otherwise directed by the Contracting Officer.

(1) *Designation of Service.* The Contracting Officer or his authorized representative will furnish to the Contractor a copy of "Stevedoring Advice Slip" previously furnished to the Army Stevedore Contractor. The copy of the notice in writing will cite the procurement allotment and the certificate of the availability of funds and will serve as authority for the Contractor to perform services on the activity indicated.

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EXHIBIT 4

STEVEDORE CHECKING & CLERKING SERVICE CONTRACT

Hampton Roads Port of Embarkation, Norfolk, Va., Installation
Contract No. DA 44-046 TC-41

Department of the Army, Transportation Corps, Agency

Contractor and address: Stevenson & Young, Inc., Norfolk Army Base, Norfolk, Virginia.

Contract for: Stevedore Checking & Clerking Services.

Place: Norfolk Army Base & Other Designated Areas.

Effective date: January 1, 1952.

Expiration date: 31 December, 1952.

Payment: The Finance Officer, U. S. Army at Fort Monroe, Virginia, is designated as the officer to make payments in accordance with this contract.

The contract is for general utilization by the Hampton Roads Port of Embarkation: all calls on the Contractor for services and orders issued hereunder by the Contracting Officer will contain the certificate of availability of funds and cite the procurement allotment to be used in making payment.

This contract is authorized by the Armed Services Procurement Act of 1947, Public Law 413—80th Congress; (approved 19 February 1948) and is entered into by negotiation pursuant to Sec. 2(c)(1) of said Act, and Presidential Proclamation 2914.

647 . CONTRACT FOR STEVEDORE CHECKING & CLERKING SERVICES

This contract, entered into this 18 day of December 1951, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Stevenson & Young, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1. *General Scope of the Contract.*

(a) *General.* The Contractor agrees to furnish all stevedore checking and clerking services; and such other related services (excluding stevedoring, terminal operations and watching services) as may be designated herein, and, in connection therewith, to perform all the duties of a stevedore checking contractor on any vessel which the Contracting Officer may designate at Norfolk Army Base or at any pier or anchorage in or about the Hampton Roads Harbor area, upon the terms and conditions hereinafter set forth for the term of this contract beginning 1 January 1952, and ending 31 December 1952. Vessels started before and not completed by the expiration date of this contract shall be completed under this contract unless otherwise directed by the Contracting Officer.

(1) *Designation of Service.* The Contracting Officer or his authorized representative will furnish to the Contractor a copy of "Stevedoring Advice Slip" previously furnished to the Army Stevedore Contractor. The copy of the notice in writing will cite the procurement allotment and the certificate of the availability of funds and will serve as authority for the Contractor to perform services on the activity indicated.

(2) *Contractor's Responsibility.* The Contractor is responsible for the proper checking, tallying, direction of sorting, clerking, receiving and delivery of all cargo to or from vessels and docks; for the liaison as required between the Terminal Operations Division, the Port Transportation Division, other operating Divisions of the Hampton Roads Port of Embarkation and commercial agencies on the forwarding, routing, receiving and delivery of all freight to or from vessels. All work is to be performed in the order directed by and in a manner satisfactory to the Contracting Officer.

(b) *Contractor's Duties—Checking and Clerking.*

(1) For all vessels to be loaded or discharged the Contractor shall check, tally, direct the sorting, and document as required

all cargo from or to dock cargo carriers or place of rest on pier to or from vessels in the order directed by and in a manner satisfactory to the Contracting Officer or his representative. The Contractor shall be compensated therefor at the commodity rates set forth in Schedule I (A) herein.

(2) When directed by the Contracting Officer, the Contractor shall receive and deliver, check and tally cargo from or to: lighters, barges, car floats, derricks, scows, or other dock cargo carriers to or from place of rest, on the piers or bulkheads or to or from floating equipment at the bulkheads. The Contractor shall be compensated therefor at the commodity rates set forth in Schedule I (B) herein.

648 (3) In connection with the duties described in sub-paragraph (1) and (2) hereinabove, all services will be performed in accordance with the directives, publications, standing operating procedures and documentation, subject to any and all changes thereto, issued by the Chief, Terminal Operations Division or his representative.

(c) *Damage Reports.* In all instances where cargo, vessel, vessel equipment or Government equipment sustains damage through handling by or at the direction of Contractor's employees, either aboard the vessel, or on the pier, a full report of the fact and extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(d) *Office Space and Equipment Supplies by Government.* The Government, at its own expense, shall provide and maintain in good order, adequate freight office space on each pier or other area for the performance of clerical and administrative functions required by the checking operation. The Government shall also provide at its own expense, utility services, telephone service, office furniture and equipment, office supplies and Government forms necessary for the proper performance of the duties of the clerking staffs performing cargo operation functions under this contract.

(e) *Clerical Staffs.* The Contractor, at his own expense, shall provide and maintain an adequate complement of checkers, clerks and supervisory personnel at the terminal properly and expeditiously to perform on a 24 hour basis an entire stevedore checking operation, including the assignment of a Temporary Clerk to each Pier Officer to assist in the operations of the pier and to prepare required pier operating reports. The Contractor shall maintain and operate on each pier, a freight office for the proper execution and prompt distribution of Department of Army Shipping Documents, tallies, and such other freight and cargo documents for the receiving and checking of cargo as shall be required by the Con-

tracting Officer or his representative. All documentation to be performed in the order directed by and to the satisfaction of the Contracting Officer. The Contractor shall also furnish, at his own expense, a necessary and adequate force to staff a central freight office which will supervise and co-ordinate all of the Contractor's freight functions, such force to include a Superintendent Tallyman for the terminal.

(f) *Cargo Reports.* The contractor shall prepare and render such cargo status reports, inventories, daily operations or other reports relative to its performance under this contract, as may be currently required under competent Army directives and regulations or as may be specified from time to time by the Contracting Officer.

(g) *Preparation of Manifests.* The Government shall prepare and distribute ships' manifests on the basis of information furnished by the Contractor. Contractor will expedite the execution and distribution of cargo and freight documents to the Government manifesting office in order that ships' manifests may be currently maintained, so that, as of the sailing date of the vessel, only those documents pertaining to the last day's loading remain to the manifested, and in order that all cargo documents reach the manifesting office at least six (6) hours prior to scheduled undocking time of vessel or as soon as practicable in event vessel continues loading up to her sailing time.

649. (h) *Security.* The Government shall provide the necessary personnel to comply with Army security requirements. However, the Contractor shall be held responsible for the exercise of reasonable practice, diligence and care regarding the safekeeping of cargo, freight or equipment belonging to the Government or others, which responsibility and duty hereby is specifically assumed by the Contractor. The Contractor shall forthwith remove any of its employees found violating Army security regulations and shall not further employ such persons with respect to Army work until such persons have been cleared with the Army's Security Division.

(i) *Negligence of Contractor's Employees.* The Contractor shall pay for the cost of all repairs to the Government's terminal facilities, equipment or cargo caused by the negligence of the Contractor's employees or its approved subcontractors.

(j) *Tonnage Figures & Invoices.* The weight ton referred to in this contract shall be a ton of 2240 lbs., and the measurement ton shall be a ton of forty (40) cubic feet. Where rates are provided on both a weight and measurement basis, the Contractor shall be paid on the basis of a payable ton, whichever produces the greater tonnage, the weight ton of 2240 lbs. or the measurement ton of forty (40) cubic feet. The Government will furnish

the Contractor a breakdown of cargo handled, according to the commodity list. Properly certified invoices in quadruplicate will be submitted by the Contractor not later than ten (10) days after receipt of tonnage figures. Partial payment for services performed may be made upon approval of the Contracting Officer. No services will be paid for by the Government other than those specifically enumerated herein and provided for in the rate schedules of this contract, and no rule or custom of the port not herein provided for will be binding upon the Government.

(1) Invoices shall be in a form acceptable to the Government, supported by satisfactory statements or schedules of the basis for all charges and shall be submitted in quadruplicate to the Contracting Officer. All invoices submitted to the Government by the Contractor will bear the following certification:

"I certify that the above bill is correct and just and that payment therefor has not been received.

Firm Name
 Person Signing
 Title"

(k) *Detentions.* The Contractor shall, without limitation, absorb each and every detention and waiting time when the contractor is being compensated on a commodity-rate basis, except that the Government shall pay the Contractor at the detention rate for the minimum guarantee of time under the applicable collective bargaining agreement for (1) checkers only when due or cessation of work by longshoremen prior to end of work period, and (2) all classes of labor set out in Schedule III when employed and idle due to non-shaping of longshoremen as a result of conditions beyond the control of the Contractor. The Government shall also pay the Contractor at the detention rate for travel time to or from another work site or "down-the-bay" for the classes of labor set out in Schedule III employed and ordered thereto for the purpose of checking Army cargo.

(1) *Extra Labor.* The Contractor shall, when directed by the Contracting Officer, supply extra labor for miscellaneous services not specifically set forth in other paragraphs of this Article 1, and shall be compensated therefor at the extra labor rates set forth in Schedule II herein.

(m) *Overtime Differential.* The Contractor shall order out men for overtime work only with the approval of the Contracting Officer or his representative. When approved by the Contracting Officer, and in accordance with such approval, the Contractor

shall be paid for all overtime services, in addition to the applicable commodity rates or manhour rates, for the classes of labor set forth in Schedules IV and V at the overtime differential rates set forth in such schedules. Overtime will be computed in accordance with the prevailing collective bargaining agreement applicable to the Contractor and its employees.

(n) *Indirect Labor.* The Contractor shall not be compensated at any time for the services of timekeepers, general superintendents, superintendent tallyman, or other indirect or non-productive labor in the performance of any services under this contract.

(o) *Penalty Rates.* All rates, as set forth in rate schedules of this contract include the payment of penalties where payable under applicable collective bargaining agreements.

(p) *Traveling Time and/or Minimum Guarantees.* When the Contractor is required by existing collective bargaining agreements to pay travel time and/or minimum guarantees of time to the men employed, the Contractor shall be compensated therefor at the hourly *straight* time rates specified under "Detentions", Schedule III, upon the written approval of the Contracting Officer or his representative. The term "minimum guarantees" as used herein is interpreted as that time lost, covered by collective bargaining agreements, which occurs involuntarily, i.e., after a call for labor has been placed and is answered by the physical presence of an employee who subsequently loses time not of his own volition. Payments for voluntary absences (i.e., sick leave) are therefore not authorized.

(q) *Transportation of Men and Other Allowances.* When the Contractor is required to pay allowances for subsistence, quarters, and rail, bus or boat fares in transporting men from other locations to place of operations in accordance with existing agreements between the trade unions and contractors, the Contractor will be reimbursed the actual out-of-pocket expenses by the Government when approved by the Contracting Officer.

(r) *Safety.* The Contractor shall, in performing services on the piers and farm areas allocated to him, observe all Hampton Roads Port of Embarkations safety and other applicable regulations; all other commercial marine safety practices and take all necessary and proper fire precautions. It shall cooperate with Government safety and fire engineers to the end that a "safe practices" program may be developed.

651 (s) *Compensation for Vacation, Pension and Welfare Fund Expense.* Compensation for vacation, pension and welfare fund expenses are included in the rates specified in this contract.

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Article 2. Schedule of Rates

(a) **Commodity Tonnage Rates—Schedule I.** The Contractor will be compensated for all services, except those specified elsewhere in this contract, at the commodity rates listed herein which are based on straight time rates of pay only.

Type of Cargo	(A)	(B)
	Vessel Tonnages	Dock Cargo Carrier Tonnages
	WT/MT	WT/MT
11. All cargo (except distressed and explosive cargo)	\$.144	\$.144
8. Explosives and Distressed cargo	\$.39	\$.39

(b) Miscellaneous Hourly Rate Schedules:

	Checker	Rec. or Del. Clerk
Extra Labor—Schedule II—Rates per Man Hour		
Commodity		
All cargo (except explosives and distressed cargo)	\$2.40	\$2.68
Explosives and distressed cargo where penalty rate is paid	\$4.64	\$5.21
Detentions, Travel and Minimum Guarantees—Schedule III— Rates per Man Hour		
Commodity		
All cargo (except explosives and distressed cargo)	\$2.25	\$2.52
Explosives and distressed cargo where penalty rate is paid	\$4.34	\$4.88
Overtime Differential—Schedule IV—Rates per Man Hour (Regular)		
Commodity		
All cargo (except explosives and distressed cargo)	\$1.10	\$1.15
Explosives and distressed cargo, where penalty rate is paid	\$2.20	\$2.31

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(b) Miscellaneous Hourly Rate Schedules (Cont'd)

Sat., Sun., and Holiday Minimum O.T. Differential Guarantees—
Schedule V—Rates per Man Hour

If employed
between 8 AM and 12 Noon
or only between 1 PM and 5 PM

Commodity	Checker	Rec. or Del. Clerk
All cargo (except explosives and distressed cargo)	\$2.04	\$2.31
Explosives and distressed cargo, where penalty rate is paid	\$4.09	\$4.61

654 Article 3. Revision of Prices.

a. The prices fixed in this contract may be increased or decreased in accordance with this Article.

b. *Demand for Negotiation.* At any time and from time to time, subject to the limitations specified in this Article, either the Government or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be made before ninety (90) days after the date of this contract, and thereafter neither party shall make a demand having an effective date within ninety (90) days of the effective date of any prior demand, provided, however, that this limitation shall not be applicable in the event that during any ninety-day period there is a "wage adjustment" as hereinafter defined. The term "wage adjustment," as used in this article, means a change in the wages, salaries, or other terms or conditions of employment which shall substantially affect the cost of performing this contract and which shall be generally applicable to the port where work under this contract is performed and shall be applicable to operations by the Contractor on non-Government work as well as to work under this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as to which the revised prices shall be effected as to services performed thereon and thereafter. This date is hereinafter referred to as the "effective date of the price revision." Any demand under this Article, if made by the Contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph c. of this Article. If the demand is made by the Government, such statements and data will be furnished by the Contractor within thirty days of the delivery of the demand.

c. *Submission of Data.* At the time or each of the times specified or provided for in paragraph b. of this Article, the Contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices for the services to be performed under the contract after the effective date of the price revision itemized so far as is practicable in the manner in which the cost estimates were itemized in connection with the original negotiation of the contract; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant operating data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of the experienced costs of performance hereunder (by commodities where applicable) to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices

Act of 1947, Public Law 413—80th Congress, approved 19 February 1948) and is entered into by negotiation pursuant to Sec. 2(c) (1) of said Act, and Presidential Proclamation 2914.

HR TO&IS Cy/52.

657 CONTRACT FOR CAR, TRUCK, AND BARGE LOADING AND UNLOADING AND TERMINAL OPERATIONS SERVICES

This contract, entered into this 16 day of December, 1951, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Stevenson & Young, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1. General Scope of the Contract

(a) *General.* The Contractor agrees to furnish all terminal and pier warehouse services excluding physical plant facilities (piers, warehouses, etc.); all checking and clerking service in connection therewith; all policing (sweeping and cleaning) services; and such other terminal services (excluding vessel checking and stevedoring; watchman and guard service; utilities and maintenance of premises service) as may be designated herein, and, in connection therewith, to perform all the duties of a terminal operator in such areas of the Norfolk Army Base or at any pier in or about the Hampton Roads harbor area as may be designated by the Contracting Officer, all as hereinafter more particularly described and upon the terms and conditions hereinafter set forth for the term of this contract, beginning 1 January 1952 and ending 31 December 1952. Services started before and not completed by the expiration date of this contract shall be completed under this contract unless otherwise directed by the Contracting Officer.

(1) *Designation of Service.* The Contracting Officer or his authorized representative will advise the Contractor before the beginning of work (on a monthly basis) and will thereafter promptly confirm in writing the order to perform services. The notice in writing will cite the procurement allotment and the certificate of availability of funds and will serve as authority for the Contractor to perform services as indicated.

(2) *Contractor's Responsibility.* Within the areas controlled by the Army, Contractor is responsible when directed by the Contracting Officer for the receiving and delivery, loading and unloading of all cargo to or from warehouses and open (farm) areas or direct pier delivery to place of rest by any means of delivery (rail-

road cars, lighters, trucks, vans, etc.) to include checking, tallying, clerking, direction of sorting, segregation, routing, warehousing, and delivery to the piers as required; for the policing, broom sweeping, cleaning, and general policing duties on the pier, pier aprons, bulkheads, freight offices, warehouses, outside storage, and terminal areas of all dirt and debris arising from operations in any terminal area in accordance with Army standards, for the liaison as required between the Terminal Operations Division, Port Transportation Division, other operating divisions of the port and commercial agencies in connection with forwarding, routing, receiving, and delivery of all intransit storage freight in and out of Hampton Roads Port of Embarkation. All services to be performed in the order directed by and in a manner satisfactory to the Contracting Officer.

658 (b) Contractor's Duties

(1) *Cargo Loading & Unloading.*

a. The Contractor shall, when directed by the Contracting Officer, load or discharge cargo (properly segregated and sorted) to or from any intransit storage area under control of the Army, whether in covered warehouses, direct to or from pier or open (farm) areas, from or to railroad cars, lighters, trucks, vans, or other means of delivery. Discharging shall include the removal of lashings, dunnage, shoring, cradles, lashing gear and such cleaning as is required according to local custom. Loading shall include the proper checking, stowing, lashing, and securing of cargo in the order directed by and in a manner satisfactory to the Contracting Officer. In loading and discharging, the Contractor shall at his own expense, (i) open, close, rig and unrig any cargo carrier necessary in order to properly load or discharge such carrier except that rigging necessary on floating derricks or heavy lift dock cranes will be supplied by the Government; (ii) transport and handle all dunnage, lumber, and lashing gear necessary to properly stow, protect and secure the cargo at the place of rest or in the dock cargo carrier; and (iii) when required, supply men to assist in the slinging and unslinging of cargo when handled by floating derricks and/or heavy lift dock cranes. The Contractor shall also, at his own expense (i) remove from or place such cargo in open or covered storage in any area designated by the Government and under its control; (ii) repack, repackage, mark or remark any cargo requiring same whether or not due to the negligence of the Contractor; (iii) perform such other services accessorial to the loading and discharging of carriers as shall be required in such connection. The Contracting Officer will declare any unusual or extraordinary cooping operation including cooping of cargo required to be removed from the cargo assembly area and not due

to the negligence of the Contractor to be performed on an extra labor basis, to be paid for at the rates set forth under ARTICLE 2, Schedule II. Nothing contained herein shall operate to relieve the Contractor from any liability arising from cargo damaged as a result of his negligence.

b. The Contractor shall remove from storage area and load on trucks, trailers on other conveyances provided by the Government, such cargo as is called forward by the Army for delivery and discharge to place of rest on pier or reverse the operation if cargo is coming from pier to storage.

c. The Contractor shall transfer or shift cargo previously put to rest, from one pier to another, from one warehouse to another, from warehouse to open area, from open area to warehouse, from bay to bay within a warehouse or from one open area to another open area, all from place of rest at the pick-up point to place of rest at the receiving point. The Contractor shall be paid in this connection only when such services are specifically ordered by the Contracting Officer or his representative. Any such services performed by the Contractor not specifically authorized by the Contracting Officer or his representative, shall be at the Contractor's own expense.

d. *Troop and Home Station Impedimenta, Baggage.* For any services required of Contractor in performing terminal work in connection with troop and home station impedimenta and baggage, Contractor will be compensated therefor at the "extra labor" rates set forth in ARTICLE 2, Schedule II.

659 (2) *Checking and Clerking.*

a. *Intransit Storage.* The Contractor shall check, tally, direct the sorting and segregation of all cargo loaded or discharged from or to railroad cars, lighters, trucks, vans or other types of conveyances to or from any storage area under control of the Army whether in covered warehouses, pier sheds, or open (farm) areas. The Contractor shall also check, tally and document as required all cargo called forward from place of rest in inland storage area to place of rest in pier; shall check, tally and document all cargo ordered transferred or shifted from one pier to another, from one warehouse to another, from warehouse to open storage area, from open storage area to warehouse, from bay to bay within a warehouse or from one open area to another open area, all from place of rest at pick up point to place of rest at receiving point.

(3) *Policing.*

a. The Contractor, at his own expense, shall maintain and supervise a force of laborers, including sweepers and cleaners sufficiently adequate to maintain in all terminal areas under the control of the

Army in a state of police and reasonable cleanliness on a 24 hour basis in accordance with Army standards. Terminal areas shall include, but not be limited to, piers, bulkheads, pier aprons, warehouse aprons, pier freight offices, warehouses, warehouse offices and shops, and open storage areas and all latrines and lavatories in these buildings or areas. Policing shall include broom sweeping the areas as directed by the Contracting Officer; removing accumulations of oil and grease from pier and warehouse floors when same has become a safety hazard as determined by the Contracting Officer; thorough cleaning and washing as required and maintenance in a state of cleanliness of all lavatories in the above areas under the control of the Army.

b. When work is performed under this contract on or across an area which is owned or leased by the Government, the Contractor, at his own expense, shall provide in that area at least one sweeper to every 30,000 sq. ft. of space for the purpose of cleaning, sweeping, and general policing duties on the piers, pier stringers, bulkheads, pier aprons, pier freight offices, warehouses, warehouse offices, and shops under control of the Army. Contractor will also police open storage areas under the control of the Army. The Contractor shall maintain constant liaison with the Commanding Officer or his representative, to the end that a sufficient and adequate force is available on a 24 hour basis, if required, to keep all terminal areas in a constant and continuous state of order. Should Contractor and Contracting Officer determine that the complement of sweepers and/or cleaners hereinabove prescribed is insufficient to accomplish the degree of police required by Army standards, extra sweepers shall be employed by the Contractor and assigned to these duties upon the authorization of the Contracting Officer, and the Contractor shall be paid for these extra sweepers at the standby rates set forth in Article 2, Schedule III.

(4) The Contractor shall perform all of the duties described in subparagraphs (1), (2), and (3), hereinabove in accordance with the directives, publications, standing operating procedures or other requirements subject to any and all changes thereto, issued by competent Army agencies of the Hampton Roads Port of Embarkation.

(5) The following areas are excluded from the policing clause: Army Administrative offices in Sections A, B, C, D of Building 4; Provost Marshal office; Post Engineer office in Section K, Building 2; and Terminal Operations Division office in upper level of Pier No. 2.

660 (c) *Clerical Staffs.* The Contractor shall, at his own expense, provide and maintain an adequate complement of checkers, clerks and supervisory personnel for the terminal and pier intransit storage areas, properly and expeditiously to perform on

a twenty-four (24) hour basis, an entire operation. The Contractor shall also, at his own expense maintain and operate in each pier and warehouse building, as required, a freight office for the proper execution and prompt distribution of Department of the Army Shipping Documents (DASD) Vendors shipping documents and such other freight and cargo documents for the receiving and delivery of cargo as shall be required by the Contracting Officer. The Contractor shall also, at his own expense, furnish a necessary and adequate clerical force to staff a central intransit operations freight office which will supervise and coordinate all of the intransit freight functions of the Terminal, such force to include a Superintendent Tallyman to supervise the Contractor's checking functions in the warehouses, piers and open areas.

(d) *Damage Reports.* In all instances where cargo, cargo carriers, Government facilities or equipment sustains damage through handling by or at the direction of Contractor's employees, a full report of the fact and extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(e) *Office Space and Equipment.* The Government, at its own expense, shall provide adequate freight office space in each warehouse building or other ~~area~~ for the performance of clerical and administrative functions required by the terminal operation of this contract. The Government shall also provide, at its own expense, utility services, necessary telephone service, office furniture and equipment, office supplies and Government forms necessary for the proper performance of the duties of the clerking staffs performing Terminal operation functions under this contract. The Contractor, at his own expense, shall maintain and keep in good repair, the office furniture and equipment which is furnished by the Government.

(f) *Gear & Materials Supplied by the Government.* The Government shall, at its own expense furnish, operate, and maintain in good working order the following: lighters, floating derricks, heavy lift dock cranes, tractor and mobile cranes (over 5 ton lifting capacity) automotive trucks and flat-bed truck trailers necessary to move cargo from or to warehouse and open areas to or from piers, fixed terminal lifting equipment including gantries, fixed shore cranes if any, locomotives and switching equipment. The Government shall also, at its own expense, furnish pallet boards, power and steam necessary, dunnage, lumber, lashing gear and other equipment as may be required for cooping, marking, repackaging, dunnaging, securing, and shoring cargo in all instances. Floating derricks and dock cranes will not be used when in the opinion of the Contracting Officer, Contractor's equipment can be used satisfactorily.

(g) *Gear & Materials Supplied by Contractor.* The Contractor shall perform an efficient operation and, except as provided in paragraph (h) of Article 1, shall at his own expense furnish all necessary and proper gear, including without being limited to, the following: roller conveyors, hooks, cargo nets, save-all nets, rollers, skids, chain slings, platform slings, wire and rope slings (except heavy-lift slings used in connection with shore or floating heavy-lift cranes), spreaders, hand trucks, machinery dollies, trailers, protective equipment such as safety goggles, gloves, safety shoes, foul weather gear and clothing, etc., lift trucks, tractors, and tractor cranes (up to 5-ton lifting capacity), provided, however, that 661 the Contractor shall be compensated for furnishing mobile equipment in accordance with the applicable schedule in Article 2, whenever such equipment is furnished in connection with services performed on a man hour rate basis. The Contractor shall also furnish at his own expense the following: brooms, shovels, scrapers, debris carts, cleaning compounds and materials and such other similar cleaning materials and equipment as shall be required. The Government, at its own expense, will provide adequate storage space for Contractor's equipment which is used in the performance of this contract.

(h) *Rental of Mobile Equipment.*

(1) The Contractor, when directed by the Contracting Officer to supply extra-labor services, shall also supply and maintain the necessary mobile equipment to the extent available, and the Contractor shall be compensated therefor at the rates set forth in the applicable schedule of Article 2.

(2) Upon request the Government will supply mobile equipment, if available to the Contractor, and the Government shall be compensated therefor at the rate set forth in the applicable schedule 2 of Article 2.

(3) If the Government supplies mobile equipment to the Contractor (a) for use in performing extra-labor services, or (b) for tiering or breaking down cargo piled beyond the height which can be reached by the Contractor's equipment to within reach thereof, no charge shall be made by the Government for the use of such mobile equipment.

(i) *Transportation of Gear by Contractor.* The Contractor will transport his own gear and equipment when necessary at his own expense, except transportation of said gear and equipment shall be at Government expense at locations inaccessible to trucks.

(j) *Cargo Reports.* The Contractor shall prepare and render such cargo status reports, inventories, daily operations or other reports relative to its performance under this contract, as may be

currently required under competent Army directives and regulations or as may be specified from time to time by the Contracting Officer. Contractor will be required to render such reports, etc., as may be required by the Contracting Officer for cost accounting purposes.

(k) *Preparation of Manifests and Bills of Lading.* The Government shall prepare and distribute ships' or other carriers' manifests and bills of lading partial or fully on the basis of information furnished by the Contractor. Source of such information will include, but not be limited to, Department of the Army Shipping Documents, vendors shipping documents, or other such receipt as may be issued on incoming or outgoing cargo. Contractor will expedite the execution and distribution of such cargo and freight receipts to the Government Documentation office in order that bills of lading or manifests may be currently maintained. All cargo documents must reach the Government Documentation offices not later than six (6) hours subsequent to receipt or delivery of cargo.

(l) *Security.* The Government shall provide the necessary personnel to comply with Army security requirements, but the foregoing shall not be construed as affecting the Contractor's obligations or responsibilities assumed pursuant to the terms of this contract.

662 The Contractor shall be held responsible for the exercise of reasonable practice, diligence and care regarding the safe-keeping of cargo, freight or equipment belonging to the Government or others, which responsibility and duty hereby is specifically assumed by the Contractor. The Contractor shall forthwith remove any of its employees found violating Army security regulations and shall not further employ such persons with respect to Army work until such persons have been cleared with the Army's security Division.

(m) *Negligence of Contractor's Employees.* The Contractor shall pay for the cost of all repairs or replacement of the Government's facilities, equipment or cargo caused by the negligence of the Contractor's employees or its approved subcontractor.

(n) *Tonnage Figures and Invoices.* The weight ton referred to in this contract shall be a ton of 2240 pounds, and the measurement ton shall be a ton of forty (40) cubic feet. Where rates are provided on both a weight and measurement basis, the Contractor shall be paid on the basis of a payable ton, whichever produces the greater tonnage, the weight ton of 2240 pounds or the measurement ton of forty (40) cubic feet. The maximum tonnage, either weight or measurement, upon which compensation is to be computed for any single lift shall be one hundred fifty (150) tons. The Government will furnish the Contractor a breakdown of cargo handled, according to the commodity list. Properly certified invoices in quadruplicate will be submitted by the Contractor not later than ten (10)

days after a receipt of weekly tonnage figures. Partial payment for services performed may be made upon approval of the Contracting Officer. No services will be paid for the ~~Government~~ other than those specifically enumerated herein and provided for in the rate schedules of this contract, and no rule or custom of the port not herein provided for will be binding upon the Government.

(1) Invoices shall be in a form acceptable to the Government, supported by satisfactory statements or schedules of the basis for all charges and shall be submitted in quadruplicate to the Contracting Officer. All invoices submitted to the Government by the Contractor will bear the following certification:

"I certify that the above bill is correct and just and that payment therefor has not been received.

Firm Name
 Person Signing
 Title"

(c) *Detentions.* The Contractor shall, without limitation, absorb each and every detention and waiting time when the Contractor is being compensated on a commodity-rate basis, except that the Government shall pay the Contractor at the detention rate for the minimum guarantee of time under the applicable collective bargaining agreement for (1) freight handlers, checkers, or tallymen only when due to cessation of work prior to end of work period, and not due to the fault or negligence of the Contractor and (2) all classes or labor set out in Schedule III, when employed and idle due to non-shaping or non-reporting for work of labor directly connected with the activities of the Contractor without which the Contractor could not perform his operation, as a result of conditions beyond the control of the Contractor. The Government shall also pay the Contractor at the detention rate for travel time to and from another work site for the classes of labor set out in Schedule III, employed and ordered thereto for the purpose of checking or handling Army cargo. If any detention is due to the fault of the Contractor, the entire detention time resulting therefrom shall, without limitation be for the account of the Contractor. The Contractor will immediately notify the Contracting Officer or his representative at the start of each detention.

(1) *Traveling Time and/or Minimum Guarantee.* When the Contractor is required by existing collective bargaining agreements to pay travel time and/or minimum guarantees of time to the men employed, the Contractor shall be compensated therefor at the hourly straight time rates specified under "Detentions", Schedule III, upon the written approval of the Contracting Officer. The term "minimum guarantees" as used herein is interpreted as that time

lost, covered by collective bargaining agreements, which occurs involuntarily, i. e., after a call for labor has been placed and is answered by the physical presence of an employee who subsequently loses time not of his own volition. Accordingly, payments for voluntary absences (i. e., sick leave, etc.) are not authorized.

(2) *Snow Removal.* Upon the request of the Contracting Officer and only with his approval, the Contractor agrees to furnish men and foremen for emergency snow removal purposes. Snow removal shall be limited to the cargo areas used by the Army's Contractors and shall be ordered only to prevent delays to movements of cargo. The Contractor shall be compensated therefor at the *Detention rates set forth in Article 2, Schedule III for men and foremen only.*

(p) *Extra Labor.*

(1) The Contractor shall, when directed by the Contracting Officer, supply extra labor for miscellaneous terminal services not specifically set forth in other paragraphs of this Article 1, when not occasioned by the negligence of the Contractor and shall be compensated therefor at the extra labor rates set forth in Schedule II herein. Among the miscellaneous services for which such extra labor may be required but not by way of limitation, are the following: loading or unloading of mail and baggage, handling excess dunnage, lashing, bracing and securing cargo on cars loaded only, towing of wheeled vehicles, rehandling, removing or shifting cargo.

(2) The commodity rates set forth in Article 2, Schedule I, include all work and labor connected with the policing (picking up of, scrappings, lumber etc.,) which cannot be swept up, and such services will not be considered as an extra labor charge.

(3) *Assisting Others in Handling Cargo.* When ordered by the Contracting Officer and under his direction the Contractor will supply freight handlers (equipment drivers and such other men as may be required) to assist railroads or other companies in discharging railroad cars and lighters for the convenience of the Government. The Contractor will be compensated therefor at the extra labor rates set forth under Article 2, Schedule II. The Contractor shall also be compensated on an extra labor basis for those checkers and clerks directed to be supplied in connection with loading and discharging of cargo by other than the Contractor. In those instances, the commodity rate indicated in Schedule I herein shall not apply.

664 (4) *Tiering.* If cargo tiered at the pile is beyond the reach of the Contractor's equipment, the Government will break it down at the place of tiering so that it can be handled by the Contractor's equipment. No charge will be made by the Contractor for removing cargo from piles within the reach of his equipment. Cargo

to be tiered above reach of Contractor's equipment will be at Government expense.

(q) *Overtime Differential.* The Contractor shall order out men for overtime work only with the approval of the Contracting Officer. When approved by the Contracting Officer, and in accordance with such approval, the Contractor shall be paid for all overtime services, in addition to the applicable commodity rates or man hour rates, for the classes of labor set forth in Schedule IV, at the overtime differential rates set forth in such schedule. Overtime will be computed in accordance with the prevailing collective bargaining agreement applicable to the Contractor and its employees.

(r) *Indirect Labor.* The Contractor shall not be compensated at any time for the services of timekeepers, general superintendents, superintendents or other indirect or non-productive labor in the performance of any services under this contract.

(s) *Penalty Rates.* All rates, as set forth in rate schedules of this contract include the payment of penalties where payable under applicable collective bargaining agreements.

(t) *Transportation of Men and Other Allowances.* When the Contractor is required to pay allowances for subsistence, quarters, and rail, bus or boat fares in transporting men from other locations to places of operations in accordance with existing agreements between the trade unions and Contractors, the Contractor will be reimbursed the actual out-of-pocket expenses by the Government when approved by the Contracting Officer.

(u) *Safety.* The Contractor shall, in performing services in the areas allocated to him, observe all Hampton Roads Port of Embarkation safety and other applicable regulations; all other commercial marine and warehouse safety practices and take all necessary and proper fire precautions. It shall cooperate with Government safety and fire engineers to the end that a "safe practices" program may be developed. In addition the Contractor agrees to furnish to the Port Safety Engineer a report of each and every accident occurring to the Contractor's employees in the manner prescribed by port procedures. Failure to furnish such reports may constitute "default" as indicated in Article 4, Damages—Default.

(v) *Compensation for Vacation, Pension, and Welfare Fund Expenses.* Compensation for vacation, pension and welfare fund expenses are included in the rates specified in this contract.

(w) *Superintendence by Contractor.* The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the job at all times during the performance of this contract, with authority to act for him.

665 (x) *Permits.* The Contractor shall, without additional expense to the Government, obtain all required licenses and

permits and be responsible for all damage to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the contract.

(y) *Other Contracts.* The Government may award other contracts for additional or similar services, and the Contractor shall fully cooperate with such other Contractors and carefully fit his own work to that provided under the contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor.

(z) *Income for Handling Lighters, Railroad Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks and railroad cars under this contract shall be for the account of the Contractor and will be collected by the Contractor; *Provided*, that the Contractor will deduct from invoices rendered to the Government such amounts as are collected by the Contractor in accordance with the provisions herein. The Contractor agrees to exercise every reasonable effort to effect collection of such revenue as is legally due from such other sources. The Contractor will maintain adequate and accurate records to reflect such income collected from sources other than provided for in this contract.

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Article 2. Schedule of Rates

(a) *Terminal Operations & Intransit Storage Commodity Tonnage Rates—Schedule.* The Contractor will be compensated for such services, except those specified elsewhere in this contract, at the commodity rates listed herein which are based on straight time rates of pay only.

(Railroad Cars, Lighters, Barges, Trucks
& Other Cargo Carriers)

	(A) Discharging Cargo Carriers	(B) Loading Cargo Carriers	(C) Transferring Cargo
	WT/MT	WT/MT	WT/MT
6. Cement in bags.....	\$1.40	\$1.49	\$1.61
8. Blank.....			
11. General Cargo, N.O.S.....	1.30	1.45	1.50
18. Creosoted Lumber.....	1.65	1.75	2.09
19. Refrigerated Cargo, below freezing.....	1.88	1.99	2.59
20. Vehicles, boxed, all types.....	.88	.97	.97
21. Vehicles, unboxed, all types.....	.59	.89	.59
25. Mail or Parcel Post (per bag).....	.04	.04	.04

Note "A": When the Contractor is requested to handle any piece of cargo which measures in excess of 150 tons he shall be compensated at the maximum of 150 tons regardless of the actual measurement.

Note "B": Items 20 and 21 will include every type of vehicle, automotive and trailer including but not limited to special machinery (road, farm, military, etc.) or heavy guns, howitzers, rifles, etc., mounted on mobile bodies, chassis or trailers.

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(b) Miscellaneous Hourly Rate Schedules:

Warehousemen
(Laborers, Cleaners,
Sweepers, Handlers,
etc.)

Commodity	Crane Operator	Tally- man Checker	Clerk	Frt. Handlers				
				Men.	Fore- men	Carp.	Men	Fore- men
				Extra Labor—Schedule II—Rates per Man Hour				
All cargo.....	\$2.67	\$1.96	\$2.65	\$1.31	\$1.43	\$2.65	\$1.30	\$1.42

Standby, Detentions, Travel and Minimum Guarantees—
Schedule III—Rates per Man Hour

Commodity	Crane Oper- ator	Tally- man Checker	Clerk	Men	Fore- men	Carp.	Men	Fore- men
All cargo.....	\$2.49	\$1.83	\$2.48	\$1.22	\$1.33	\$2.48	\$1.21	\$1.32

Overtime Differential—Schedule IV—Rates per Man Hour (Regular)

Commodity	Crane Oper- ator	Tally- man Checker	Clerk	Men	Fore- men	Carp.	Men	Fore- men
All cargo.....	\$1.14	\$.82	\$1.66	\$.56	\$.61	\$1.06	\$.54	\$.61

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(c) Equipment Rental—Schedule V

Type of Equipment	Rate Per Hour*
1. Dock Tractor Crane.....	\$3.18
2. Special Model Link Belt Crane.....	6.75
3. Lift Trucks and other Mobile Equipment lifting over 7500 lbs.....	3.50
4. a. Lift Trucks lifting up to 7500 lbs. (hard tires).....	2.75
b. Lift Trucks lifting up to 7500 lbs. (pneumatic tires).....	5.00
5. Dock Tractor w/drawbar pull up to 7500 lbs.....	1.96
6. Dock Tractor w/drawbar pull over 7500 lbs.....	2.34
7. Ross Carrier (Straddle Truck).....	4.06
8. Warehouse Trailers, small.....	.04
9. Warehouse Trailers, large.....	.08

* Rates per hour include fuel, lubricants, and maintenance.

The minimum charge for the use of the above equipment shall be one-half (1/2) hours.

EXHIBIT 6

12 October 1951.

HEADQUARTERS

HAMPTON ROADS PORT OF EMBARKATION
PORT TRANSPORTATION DIVISION
Norfolk 5, Virginia

(Letter sent to all terminal railroad lines serving Hampton Port of Embarkation by Port Transportation Officer)

Dear Sir:

It is noted that the Norfolk lines have provided in their individual tariffs, or by specific reference to the Norfolk and Portsmouth Belt Line Railroad Company's Tariff 6-J (ICC 105), certain wharfage and handling charges applicable on Export, Import, Intercoastal and Coastwise freight rates applying from or to Norfolk, Virginia.

These same tariffs provide an allowance of 3 and 1/4 cents per hundred pounds for handling and 1 and 1/4 cents per hundred pounds for wharfage, payable to the Norfolk Terminals Division of Stevenson and Young, Inc. for wharfage facilities furnished and handling services rendered the carriers on commercial traffic moving through the Army Base.

Inasmuch as this same terminal operator, i.e. the Norfolk Terminals Division of Stevenson and Young, Inc. are presently performing identical services for the carriers, using the same facilities and personnel in handling Government rail traffic transshipped through this installation, information is requested as to whether they are not entitled to a similar allowance with respect to this traffic.

An early reply will be appreciated.

Sincerely

DAN L. SMITH,
Lt. Colonel, TC,
Port Transportation Officer.

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ATLANTIC COAST LINE RAILROAD COMPANY

Freight Traffic Department
Wilmington, N. C.

October 27, 1951.

In Your Reply Refer to File Fam-126029
Cy-55539Lt. Colonel Dan T. Smith, TC,
Port Transportation Officer,
Hampton Roads Port of Embarkation,
Norfolk, Va.

Dear Sir:

Mr. Beaman Hobbs, our General Agent at Norfolk, has referred to me for reply your letter of October 12th to him inquiring whether or not Norfolk Terminals, Division of Stevenson and Young, Inc., is entitled to payment by the railroads at Norfolk of allowance of $3\frac{3}{4}$ cents per 100 pounds for handling and $1\frac{1}{4}$ cents per 100 pounds for wharfage in the movement of government rail traffic transhipped through that part of Army Base terminals being operated by this concern.

As information, the same question was posed by Col. E. B. Gray, TC Assistant, Office of the Chief of Transportation, Department of the Army, in Washington, during March of this year. At his request representatives of all of the railroads serving Hampton Roads parts met with him in his offices at Gravelly Point and the whole situation was thoroughly discussed with the result that he was advised by each of the railroads involved that they could not make an allowance to either the government or its contracting terminal operator for the performance of handling services or for furnishing wharfage facilities.

Sincerely yours

(Signed) E. C. HICKS, JR.,
Assistant Freight Traffic Manager.

Copy:

Mr. Beaman Hobbs, (GA, ACL RR, Norfolk, Va.

671 Subject: Terminal allowances—

NORFOLK AND WESTERN RAILWAY COMPANY

Foreign Freight Department
402 Royster Building
Norfolk 10, Virginia

J. J. Evich,
Asst. General Foreign Freight Agent

J. A. Conner, Jr.
Foreign Freight Agent

November 23, 1951.

In Your Reply Refer to File No. 40-A

Dan L. Smith, Lt. Colonel, TC
Port Transportation Officer
Hampton Roads Port of Embarkation
Port Transportation Division
Norfolk 5, Va.

Dear Colonel Smith:

We exceedingly regret our delay in answering yours of October 12th, concerning allowances for your terminal operator.

In view of the fact that the method of operation at the Army Base, Norfolk, is in practical effect quite similar to the situation existing at that same facility during World War II where the Interstate Commerce Commission did not see fit to grant wharfage and handling allowances, and where that decision has, thus far, been adhered to in the courts, the Norfolk and Western Railway is not in position to make an allowance to the Government or its contractor for wharfage and handling, nor to undertake to perform the handling of the traffic and make a wharfage allowance thereon.

Yours very truly,

(Signed) JOHN J. EVICH,
Asst. Gen. Foreign Freight Agent.

JJE:iwf

672

NORFOLK SOUTHERN RAILWAY COMPANY

C. H. Ware
Traffic Manager

Norfolk, Va., November 6, 1951. gc
File No. 32480-A

Lt. Colonel Dan L. Smith,
Port Transportation Officer,
Hampton Roads Port of Embarkation,
Port Transportation Division,
Norfolk 5, Virginia.

Dear Colonel Smith:

Referring to your letter of October 12, regarding wharfage and handling allowance at Army Base piers, Norfolk, Va. through the Department of Army or Stevenson & Young, its contractors.

This subject was given very thorough consideration by the Norfolk rail lines with Colonel E. B. Gray, TC Assistant, Office of the Chief of Transportation, Department of the Army, Washington, D. C., in May of this year, and we were compelled to advise Colonel Gray that no allowance could be made to the Army or its contractors in the handling of government traffic over the Army Base terminals at Norfolk.

Yours very truly,

(Signed) C. H. WARE,
Traffic Manager.

673

THE PENNSYLVANIA RAILROAD

Traffic Department

J. M. C. Collins,
Division Freight Agent

October 25, 1951,
Norfolk 1, Va.,
Desk B File 216-S-1.

Lt. Colonel Dan L. Smith,
Port Transportation Officer,
Headquarters Hampton Roads Port of Embarkation,
Port Transportation Division,
Norfolk 5, Virginia.

Dear Sir:

Referring further to your letter of October 12th, with reference to absorption of wharfage and handling charges on traffic handled through the Army Base.

This has been given careful consideration and it has been concluded that we must inform you that, since control of the terminal operation by the railroads is prevented by the operation either direct by the Army, or through a contractor under Army control, the situation will be similar with that existing during World War II when the Terminal was operated directly by the Army, *the Pennsylvania Railroad cannot make an allowance to the Government nor to its contractor nor can it undertake to perform the handling of traffic which would not be under its control.*

Yours very truly,

(Signed) J. M. C. COLLINS,
Division Freight Agent.

674

SEABOARD AIR LINE RAILROAD COMPANY

Freight Traffic Department

Norfolk, Va., November 6th, 1951. m

63593-B

Lt. Col. Dan L. Smith; TC,
Port Transportation Officer,
Hampton Roads Port of Embarkation,
Norfolk 5, Virginia.

Dear Sir:

This refers to yours of October 12th in which you ask if the Norfolk Terminal Division of Stevenson and Young, Inc., is entitled to allowances for wharfage and handling on Government freight moving over Army Base terminals.

First, I must apologize for not having made an earlier acknowledgment of your communication. I sent your letter to our Commerce Department to develop certain information and it became misplaced. I hope you have not been inconvenienced by the delay.

This question was fully aired in a conference representatives of the Norfolk lines had with Col. Gray in March of this year and he was subsequently advised that the railroads could not make an allowance either to the Government or its contracting terminal operator for the performance of assessorial services on Government freight. The circumstances are no different today and the same advices which have been extended to Col. Gray will serve as a reply to your inquiry.

In the event you are not familiar with what has gone on before, I take occasion to remind you that this same matter was brought before the Interstate Commerce Commission in a formal complaint instituted by the Army several years ago (ICC Docket No.

29117). The Commission dismissed the complaint and held that the carriers were not obligated to assume the cost of the services involved. The Government then filed a suit in the District Court for the District of Columbia to enjoin and set aside the Commission's decision. In Civil No. 4829-47, the Court upheld the decision of the Commission, but I understand an appeal was perfected and is now pending before the District of Columbia Circuit Court of Appeals.

As your letter did not indicate that you have knowledge of this litigation or the negotiations with Col. Gray, I felt sure the information would be helpful for the completion of your file.

Yours very truly,

(Signed) G. B. RICE,
Vice President.

675

SOUTHERN RAILWAY SYSTEM

Office of General Agent
Norfolk, Va.

Elmo C. Davis
General Agent
Harold Cummins
Commercial Agent

October 16, 1951. wk
1201-A.

Lt. Colonel Dan L. Smith,
Port Transportation Officer,
Hampton Roads Port of Embarkation,
Port Transportation Division,
Norfolk 5, Virginia.

Dear Colonel Smith:

Replying to your letter October 12th regarding wharfage and handling allowances to Norfolk Terminals Division of Stevenson and Young, Inc. on traffic moving over the Army Base piers.

This matter was given thorough handling by our officials with Colonel E. B. Gray, Office of the Chief of Transportation, Department of the Army, Washington, D. C., in May of this year, and it was concluded that no allowances would be made to the Army or its contractors in the handling of government traffic over the Army Terminal at Norfolk.

Yours very truly,

(Signed) E. C. DAVIS.

430

UNITED STATES OF AMERICA VS.

676

THE VIRGINIAN RAILWAY COMPANY

Terminal Building
Norfolk 10, Va.

H. C. Mitchell
Traffic Manager

October 29, 1951.

File No. C-3839-A

Lt. Col. Dan L. Smith, TC,
Port Transportation Officer,
Hampton Roads Port of Embarkation,
Norfolk 5, Virginia.

Dear Colonel Smith:

We acknowledge your letter of October 12 with reference to allowances for wharfage and handling charges on export, import, inter-coastal and coastwise freight moving through the Norfolk Terminals (Army Base).

All of the Norfolk rail carriers have declined to absorb wharfage and handling charges on military traffic moving through the Army Base since May 1 when these facilities were taken over by the U. S. Army.

My kind regards,

Yours very truly,

(Signed) H. C. Mitchell,
Traffic Manager.

HCM-b

677

EXHIBIT 7

Contract MA-392

TERMINAL OPERATING AGREEMENT

Maritime Administration Terminal—Norfolk, Virginia

Agreement dated this 28th day of December, 1951, between the United States of America, represented by the Maritime Administration of the Department of Commerce, herein called the "Administration" and Stevenson and Young, Inc., a corporation organized under the laws of the State of Delaware having its office and principal place of business at 140 Cedar Street, City of New York, State of New York, herein called "Operator":

Whereas, the President of the United States by Executive Order dated June 27, 1924, transferred the possession and control of certain property owned by the United States in or near the City of Norfolk, Virginia, and known as the Quartermaster Intermediate Depot,

U. S. A., from the War Department to the United States Shipping Board;

Whereas, the custody of and functions relating to said property were transferred to the Secretary of Commerce by Executive Order dated June 10, 1933 and issued pursuant to Act of Congress of March 3, 1933 (47 Stat. 1517), and thereafter to the United States Maritime Commission by the Merchant Marine Act of 1936, and thereafter to the War Shipping Administration pursuant to Executive Order 9054 dated February 7, 1942, and thereafter to the United States Maritime Commission by the Naval Appropriations Act of 1947 (P. L. 492—79th Cong.), and thereafter to the Maritime Administration of the Department of Commerce by Reorganization Plan No. 21 of 1950. . .

Whereas, the custody, use, occupancy, operation, security, protection and maintenance of the said property have been granted by the Maritime Administration of the Department of Commerce to the Departments of the Army and Navy under Permits dated April 30, 1951 (Contract MA-111) and August 30, 1951 (Contract A-14) respectively, and Sub-Permit dated April 30, 1951 (Contract MA-112) from the Department of the Army to the Maritime Administration, copies of which permits are attached hereto and made a part hereof; and

Whereas, commencing January 1, 1952, it is desired to operate portions of the said property as a public commercial marine terminal, utilizing for such commercial operations various areas permitted to the Departments of the Army and Navy as may from time to time be made available for said purposes by the Departments of the Army and Navy, in accordance with and subject to the provisions of the permits and sub-permit next hereinabove mentioned.

Witnesseth:

That in consideration of the covenants, agreements, terms and conditions hereinafter set forth, the parties hereto mutually covenant and agree as follows:

General Conditions

1. The Operator covenants and agrees to do and perform all the duties and functions of a public commercial marine terminal operator, subject to the terms, covenants and conditions of this Agreement and to such rules and regulations issued by the Administration from time to time regarding terminal space and facilities to be utilized for such purposes and commercial cargoes to be handled therein and thereupon. 678 It is understood and agreed upon by the Operator that during the term of this Agreement, only cargoes moving to and from

vessels, barges, lighters and other water craft will be permitted to be handled under this Agreement and such cargoes will constitute the sole new business to be handled subsequent to December 31, 1951, unless otherwise specifically approved in advance by the Administration.

2. Effective January 1, 1952, certain warehouse, pier and ship berthage space, hereinafter called "the property," will be made available to the Operator by the Administration for said public commercial marine terminal operations. Said space may from time to time be either reduced or increased by the Administration.

3. The term of this Agreement shall commence at 12:01 A. M. on the 1st day of January, 1952, and end at 12:00 midnight on the 31st day of December 1952, unless terminated at an earlier date, as provided in Article XV hereof.

4. (a) The Operator covenants and agrees to pay to the Administration for the use and operation of the property, for each six months period of the term of this Agreement (or portion of said period in the event of termination of this Agreement as provided in Article XV hereof), a rental which shall be the sum of Ten percent (10%) of the total gross revenue derived from the use and operation of the said property from the loading and unloading of vessels, barges, lighters and any and all other types of water craft (hereinafter called "Stevedoring") and fifty percent (50%) of the net revenue, computed as hereinafter provided, derived from all other use and operation of the said property (hereinafter called "Terminal Operation") for such period or portion thereof. The rental payable, as provided herein shall be payable within thirty (30) days after the close of each six (6) months period of the term of this Agreement, (or portion of said period in the event of termination of this Agreement as provided in Article XV hereof).

(b) The parties hereto agree that the words "gross revenue" and "net revenue" as used in this paragraph shall include all revenue derived from the use and operation of the said property in the period or portion thereof in question whether such revenue was derived from services rendered or performed by the Operator or by any subsidiary, affiliate, related company or other associate of the operator) including, but not limited to, the following representative classes of revenue: Rental from gantry cranes, storage, and space; handling, cleaning, weighing and reconditioning of cargo; loading and unloading vessels, barges, lighters and other water craft, railroad cars, and trucks; boarding and staking; dockage and wharfage (including top wharfage and terminal allowance paid by railroads, cars, vessels, lighters or other instruments or vehicles of conveyance or

transportation); sale of water, electric current and steam, and telephone commissions and fees. For the purpose of determining the amount of revenue derived as aforesaid, all such revenue shall, so far as practicable, be deemed derived during the six (6) months period in which it is earned, it being understood that if any revenue included in computing the percentage rental to be paid with respect to such period shall subsequently become uncollectible, the Operator may deduct the amount of such uncollectible revenue from revenue for the purpose of computing the amount of percentage rental to be paid with respect to the period in which it is determined that such revenue is uncollectible, provided, however, that in the event revenue which has been determined to be uncollectible, as aforesaid, shall be subsequently collected, the amount thereof shall be added to the revenue and shall be deemed earned in the period in which it is collected.

(c) The "gross revenue" is hereby further defined to be the total amount of money received by the Operator in payment for "Stevedoring" services and "Terminal Operations," including, but not limited to the representative classes of revenue next hereinabove listed. The "net revenue" (from "Terminal Operations"), a percentage of which is the measure of rental payable to the Administration for "Terminal Operations," is hereby further defined to be that sum or amount of the gross revenue from "Terminal Operations" which remains, after deducting therefrom the items of expenses hereinafter listed in paragraph 5 hereof, at the end of each six (6) months period of the term hereof (or portion of said period in the event of termination of this Agreement as provided in Article XV hereof.)

5. In the determination of "net revenue" as used herein, the following expenses (but no other expenses) shall be allowed and permitted to be deducted from all "gross revenue" received from "Terminal Operations":

(1) Compensation paid to direct labor (except "Stevedoring") for straight time, overtime, travel time, waiting and standby time, penalty pay, transportation, board and lodging, discontinuance wages, and equitable proportion of vacation pay, (as determined by the Administration) and any other compensation, if direct labor is entitled thereto under the provisions of applicable collective bargaining agreements or under other wage scales, approved by the Administration. The term "direct labor" as used herein includes all pier superintendents, assistant pier superintendents, warehouse labor, operators of mechanical equipment, foreman, assistant

foremen, watchmen, gatemen, checkers, time-keepers, coopers, sweepers, maintenance men, tallymen, head receiving and delivery clerks, janitors, telephone operators, office staff (except that of corporate or general supervisory officials,) and other laborers, actually employed in performing the work; Provided, however, the term "direct labor" shall not include any labor normally attributable or chargeable to "Stevedoring."

(2) The amount expended by the Operator for premiums of insurance policies written pursuant to the provisions of Article VII hereof.

(3) An amount equal to all taxes payable by the Operator (only employer's contribution) pursuant to the Social Security Act and all unemployment insurance laws in respect to the wages (except "Stevedoring") paid as per paragraph (1) above.

(4) The amount of any rental charge paid by the Operator, at rates approved by the Administration, for the use of terminal operating gear and equipment as well as for the maintenance and repair of such equipment owned by the Operator, required for said commercial operation (except "Stevedoring").

(5) All amounts expended for items, the performance and cost and expense of which is an obligation of the Operator as indicated in Article IV hereof.

680 (6) All amounts paid to the United States of America for overtime services performed by customs officers and other similar Government Agents and employees.

(7) All amounts expended by the Operator to meet the requirements of the United States Post Office for the receipt and delivery of foreign mail at the Government Post Office.

(8) All amounts expended for telephone service, mail service, stationery and other supplies required for said commercial operation, including office work incident thereto, business solicitation and advertising except office work, space rentals, office expenses, etc., in connection with, and salaries of, corporate and administrative functions and officials.

(9) The amount of any other costs actually incurred and paid by the Operator with the express written approval of the Administration.

6. It is understood and agreed upon by the parties hereto that this Agreement is made expressly subject to the terms and conditions of the aforementioned Permits and Sub-permit by and between the Administration and the Departments of the Army and Navy and the Operator agrees that it will adhere

to any and all rules and regulations of the Departments of the Army and Navy regarding the Operator's utilization of said property.

The Operator further covenants and agrees as follows, all of the following agreements, conditions and covenants being hereby agreed to be material to, and of the essence of, the execution and the continuance in force of this agreement:

Article I

The Operator shall, and covenants that it will, throughout the term hereby granted, well and truly pay, or cause to be paid, to the Administration, the rent herein reserved, at the time and in the manner herein provided, without fraud or delay.

Article II

Use of Property

A. The Operator agrees to use the premises and property for the following purposes only: (1) the loading and discharging of persons and property into and from vessels and into and from railroad cars, trucks, and/or other vehicles; (2) storage of merchandise, cargo and/or freight; and (3) the assembling of outward and the delivery of inward cargo; all in accordance with the usual commercial customs and practices, provided, however, that, unless otherwise specifically approved by the Administration, the commercial business which may be handled by the Operator under this Agreement shall be limited to cargoes moving to and from vessels, barges, lighters and other water craft, and further, that the use of the storage facilities under this agreement shall be subject to such regulations and restrictions as may be from time to time prescribed by the Administration.

B. The Operator agrees at all times to afford and insure to all persons, firms, or corporations full opportunity and freedom to use the said property so far as may be necessary to secure, carry out and perform any and all contracts and agreements for the stevedoring of vessels, unhampered either directly or indirectly by the Operator, and in the event a formal complaint, under oath, shall be made and filed with the Administration that the Operator has defaulted in this obligation, the Maritime Administration of the Department of Commerce may conduct hearings on said complaint, and after such hearings, the decision of the Administrator of the Maritime Administration of the Department of Commerce shall be final and conclusive.

681 C. The Operator agrees not to employ ways or means in the conduct of its business, dangerous on account of

fire, explosion or other hazardous risks, neither to load nor to unload, handle or store any cargo dangerous or hazardous for any of the same causes, nor to berth or dock any vessels loading such cargo.

D. The Operator agrees that in its use of the aforesaid premises and property it shall use and employ every legitimate means properly to utilize the same; to use the same in such manner as best to benefit the American Merchant Marine; insofar as possible to prefer vessels documented under the laws of the United States in the use of the said property, and at no time to permit the premises and property to be used in any way prejudicial to the American Merchant Marine and/or the interests of the United States.

E. The Operator agrees that it will permit any vessel owned by the Administration and operated by it or for its account, to dock at the piers or portions of piers, then being utilized by the Operator of said property, if space is available.

F. The Operator agrees that it will obey, and that it will use due diligence to require all persons entering upon the said property to obey the following regulations concerning the use of the said property, unless otherwise directed by the Departments of the Army and Navy whose instructions and directions shall take precedence.

1. The maximum weight placed on any square foot of space on the piers or in the warehouses of the said premises and property shall not at any time exceed limits specified by City Ordinances.

2. Vessels lying in slips or berths or docked at the piers must at all times have on board at least one person in charge of such vessel, vested with full authority to take such action as may be necessary in event of emergency, and in case of necessity any vessel must haul and go into the stream at its own expense.

3. No vessel shall be made fast or tied up by any rope or mooring to the piers except by mooring bits provided for the purpose. No vessel may use the mooring bits or dolphins for warping along the piers or around the end of the piers. Vessels moving into the slips or alongside of the piers under their own power must approach "head on."

4. When ballast, stone, coal, ashes, brick, cinders, dust, rubbish or other loose matter that will sink in water is being transferred from a vessel to a pier or to a barge, lighter or other vessel, a canvas chute or other contrivance must be used to prevent any part of such matter from falling into the water.

5. Fire must not be used on board any vessel at a pier or in the slips for heating pitch, tar, or other inflammable matter, but may be used on floating stages or boats on the offside of such vessel for the purpose of heating such material for repair to vessel, provided such fire is continually in charge of a person capable of taking care of same. No bonfire or other open fire will be permitted on the said property.

6. No floating piles or timber shall be permitted in any slips or water adjacent to the piers except on written permission of the Administration.

682 7. The Operator shall keep the premises and property in a clean and sanitary condition at all times, and all refuse or leakage from cargo or other sources, and rubbish or other material on which no wharfage is charged must be promptly removed from the piers, warehouses or premises by the Operator. No refuse of any description will be dumped into the water, of which the Operator has control under this agreement, and no material will be dumped on the premises except in locations approved by the Administration.

8. Highly inflammable or explosive articles which may endanger life or property or affect insurance rates, or substances likely to constitute a public nuisance shall not be brought or permitted to be brought upon the property by vessels or land vehicles except with the special permission of the Administration. Guano and/or fertilizer may not be handled over or through the property. All articles brought on, handled over or upon the premises, must in all respects conform to all Federal, State and City regulations.

9. Smoking shall be strictly forbidden on any wharf, bulkhead or pier, or in or around any pier, shed or warehouse. The Operator shall inform the Administration of any violations of this requirement and the Administration shall cause to be excluded from the property and not permitted upon the property any persons violating this regulation.

10. The handling and storage of cargo and cargo handling equipment by all parties lawfully, on the said property, shall be performed in such a manner as to provide at all times; (1) free, unobstructed and direct access to all fire fighting equipment, (2) free and unobstructed operation of automatically closing fire doors, (3) free, unobstructed and direct access to all buildings and fire hydrants by the City of Norfolk Fire Department equipment and/or Departments of the Army and Navy fire equipment, and (4) protection to

doors, windows and other parts of the said property from damage by cargo and cargo handling equipment.

11. The Operator shall forbid and prevent the fueling of all gasoline-powered equipment, such as fork lift trucks and belt conveyor loaders, inside any building and will require owners and operators thereof to have a charged fire extinguisher installed thereon whenever such equipment is in operation on the said property.

G. The Operator agrees that it will obey and that it will use due diligence to require all persons entering upon the said property in connection with its commercial operations hereunder to obey and observe all the terms of this Agreement, all laws of the United States and all orders, regulations, rules and requirements adopted from time to time by the Maritime Administration of the Department of Commerce, the Departments of the Army and Navy, and any other department or agency, of the Government of the United States, and all laws, orders, rules, regulations, ordinances and requirements adopted by State, Municipal or Harbor authorities relating to the use of the said property and applicable thereto including but not limited to laws, orders, ~~rules~~, regulations, ordinances and requirements with respect to health, fire and police.

683

Article III

Rates and Charges

The Operator agrees that in all cases the rates and charges for storage, berthage, dockage and/or wharfage shall be subject to the supervision and revision of the Administration and such rates and charges so fixed on such revision shall be the rates and charges thereafter to be made by the Operator.

Article IV

Expenses of Operation, Taxes and Lines

The Operator agrees that during its use and operation of the property, under the terms of this agreement, it will pay, to whomever may be entitled thereto, all expenses incurred in the operation of said premises, including without limitation of the foregoing the gantry cranes, and the cost of all electricity, heat, and water supplied to the said property, sewage disposal, fire protection, snow and ice removal, garbage and rubbish disposal, custodial service, watchmen, insect and rodent control, and that it will pay any taxes or assessments, other

than municipal taxes or assessments on real estate, and any other charges or expenses which may be levied or imposed by any legally constituted authority against the said property, in connection with the commercial operation thereof, during the term of this Agreement or any extension, removal or continuance thereof. Should the Operator fail to pay any of the charges described in this article within sixty (60) days after invoice has been rendered therefor, the Administration may at its option pay the same, and one-half of the amount so paid shall be added to the installment of rent next becoming due and payable and be collected by the Administration as rent hereunder.

Article V

Loss or Destruction by Fire, Riot or the Elements

In the event of loss, damage to or destruction of, in whole or in part, the buildings, structures or other improvements now or hereafter erected on the said property, by fire without the fault of the Operator or its agents, or by windstorm, tidal wave, earthquake, lightning, or the elements, or by riot, public insurrection, or acts of a public enemy, or damage by friendly forces in defense maneuvers, the Administration shall, within the thirty (30) days, elect whether or not it will make repairs and, in the event the Administration shall not elect to repair the same within the time so limited either party hereto may terminate this agreement as provided in Article XV.

Article VI

Maintenance, Repairs, and Protection

A. The Operator covenants and agrees, as further rental consideration at its own cost and expense, as follows:

1. If the said property shall, during the term of this Agreement or any extension thereof, be damaged or destroyed in whole or in part by a cause other than those enumerated in Article V hereof, including but not limited to machinery, equipment, barges, scows, lighters, vessels, railroad cars and equipment, trucks and/or other land vehicles, within the control of the Operator, its employees, agents or invitees and caused by the default or neglect of the Operator, its employees, agents or invitees, the same shall be promptly repaired, rebuilt or replaced by the Operator, at least to the extent of the value, and as nearly as possible to the character of the building, structure or other improvement existing immediately prior to such occurrence.

B. 1. It will be responsible for and will perform snow and ice removal from such areas of the said property then being utilized as is (1) necessary in the conduct of the operations hereby authorized; and (2) deemed necessary by the Administration of its authorized representatives and/or the Departments of the Army and Navy to protect Government property and interests including removal of snow and ice from roofs.

2. It will maintain sufficient electric light to insure safe passage over the property then being utilized by it.

3. The Operator will provide sufficient guards and watchmen at all times during the full term of this Agreement to properly patrol and guard the property and the buildings, improvements, fixtures and improvements thereon then being utilized by it, as may be required by the Administration and/or the Departments of the Army and Navy, to protect the Government's interests.

C. In the event of a dispute as to whether the Operator has fully performed its obligations under the provisions of this Article VI, the same shall be referred to the administrator of the Maritime Administration, whose decision shall be final and binding upon both parties.

Article VII

Indemnity, Public Liability and Workmen's Compensation

A. The Operator accepts the use of said property in its present condition and state of repair and without any representations, statements, or warranties, express or implied, in respect thereof, or in respect of their condition, or the use or occupation that may be made thereof, and the Administration shall in no event be liable for any latent or other defects therein, whether structural or otherwise, or for any damage caused thereby.

B. The Operator shall indemnify and save harmless the Administration from and against any and all claims, suits, actions, damages, penalties, and/or causes of action arising during the term of this Agreement, out of any personal injury, loss of life and/or damage to property, violation of any Federal, State, Municipal law or ordinance, or other cause in connection with this Agreement or the said property or the appurtenances thereto or the equipment thereon, or upon the adjacent streets, sidewalks, roads or railroads, and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claim, the investigation thereof, or the defense of any action or proceeding, brought thereon, and from and against any orders, judgments, and/or decrees, which may

be entered therein and against any and all costs, expenses, claims or obligations (for whatever cause) which would or might diminish the net return herein provided to be paid to the Administration.

C. The Operator shall procure, maintain during the term of this Agreement and pay for one or more policies of insurance, insuring it as follows:

1. Standard Workmen's Compensation and Employer's Liability Insurance, and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under applicable state or federal statutes.

685 The Operator may, however, be a self-insurer against the risks in this subparagraph (1) mentioned, if it has obtained the prior approval of the Administration thereto, such approval to be given upon the submission of satisfactory evidence that the Operator has duly qualified as such self-insurer under applicable provisions of the law.

2. Public Liability Insurance (bodily injury, including death) subject to \$50,000/\$150,000 limits.

3. Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody or control of the Operator) in an amount of \$250,000 on account of any one accident. Such policy of insurance shall contain a so-called deductible clause in the amount of \$500, and the first \$500 of any loss or damage which ordinarily would have been covered by such policy shall be at the risk of and for the account of the Operator.

4. Such other or additional insurance as the Administration may from time to time specifically approve or require.

D. The Administration reserves the right to require the Operator to insure against risk, hazard or casualty under the so-called Comprehensive Rating Plan, or other rating plan prescribed by the Administration, if such risk, hazard or casualty is insured against pursuant to this Agreement or the premium of such policy of insurance is allowed as an expense item by the Administration.

E. All policies of insurance required under the terms of this Agreement to be carried by the Operator or for premiums on which allowance as expense items will be made by the Administration shall:

1. be written in American insurance companies; provided, however, that where the Operator has heretofore carried such such insurance or any part thereof in a foreign company admitted to do business in the State involved, and having assets in the United States, or has carried such insurance in Lloyd's

of London, the continuation of such insurance is permitted in the absence of direction to the contrary:

2. by appropriate endorsement or otherwise waive all rights of subrogation against the United States of America, provided that where the Operator is a self-insurer as provided in paragraph B 1 hereof or obtains by assignment or otherwise, any claim, demand or cause of action of any of its employees, the Operator agrees to and does hereby waive any and all such claims, demands, causes of action and rights of subrogation against the United States of America arising or resulting from the risk or liability so self-insured.

3. by appropriate endorsement or otherwise, provide that no cancellation thereof shall be effected unless thirty (30) days prior written notice thereof has been given to the Maritime Administration, addressed to Chief, Division of Ports and Facilities, Maritime Administration, Washington 25, D. C.

4. by appropriate endorsement or otherwise, provide that three copies of any endorsement written subsequent to the issuance of the policy and affecting the coverage of such policy shall be transmitted by mail to the Chief, Division of Ports and Facilities, Maritime Administration, Washington 25, D. C. at the time such endorsements are issued.

686 F. A duplicate original or certified copy of each policy of insurance required under the terms of this Agreement to be carried by the Operator or for premiums on which it is to be allowed as an expense item by the Administration, shall be forwarded forthwith to the Chief, Division of Ports and Facilities, Maritime Administration, Washington 25, D. C., and approved or disapproved as to adequacy of protection and propriety of the premium charge or rate. The certificate, if any, must show the rate of premium on the policy, and the waiver of subrogation and notice of cancellation provisions.

Article VIII

Notice of Damage to Property

The Operator agrees that in the event of any loss, damage or destruction to the said property then being utilized by it under this Agreement, or any portion thereof, from any cause whatsoever, it will give written notice of such loss, damage or destruction to the Administration immediately thereafter, such notice to contain full information concerning the loss, damage or destruction, including but not limited to, the extent of the loss, damage or destruction, the cause and manner of occurrence, the date, the name of the person or persons involved, vessels involved, and witnesses if any. Such notice shall be delivered

to the Administration in accordance with the provisions of Article XVI and shall not release the Operator from any obligations or liabilities incurred with respect to such loss, damage or destruction.

Article IX

Accounts and Statements

A. All fiscal and related matters pertaining to this Agreement shall be subject to detailed audit by the Administration.

B. The Operator agrees to maintain complete and accurate sets of books of account of its operations of the said property under this Agreement including complete and accurate books of account of any of its subsidiaries, affiliates, related companies or other associates of the Operator having any interest or business of whatsoever nature in and to the use and operation of said premises and/or the businesses being conducted in, on or about the same, in the form and manner to be prescribed by the Administration, and to give to the Administration, its agents and/or servants full access at all times, within business hours, to all such files, records and books of account relating to the use and operation of the said property for all purposes whatsoever, deemed necessary or proper by the Administration including, but not limited to the computation of rent.

C. The Operator further covenants and agrees to submit to the Administration quarterly statements, beginning with the first statement, as of March 31, 1952, and such other special reports as the Administration may require from time to time. Each quarterly statement shall contain full details as to the gross revenues, expenses, net revenue, vessel and tonnage statistics and such other data as may be prescribed by the Administration.

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Article X

Surrender Upon Termination of Agreement

The Operator shall, on the last day of the termination of the agreement, surrender to the Administration and/or the Departments of the Army and Navy the premises and property and all buildings, structures, other improvements, and the Government-owned personal property and equipment thereon, then in use by the Operator.

Article XI

The Operator shall not assign this Agreement or place any tenant upon the said property, without the prior written consent of the Administration, except that storage and warehouse agreements may be made in accordance with the approved com-

mercial terminal and/or warehouse practices without the consent of the Administration, subject, however, to the provisions contained in the paragraph entitled "General Conditions" hereof. Any consent to any assignment shall apply only to the assignment expressly consented to and shall not constitute any waiver of the right of the Administration to insist upon the securing of such prior written consent to any further or other assignment, whether by the Operator, or any assignee.

Article XII

Performance Bond

The Operator covenants and agrees simultaneously with the execution and delivery of this Agreement to furnish to the Administration, at its own expense, a bond in the sum of \$25,000, approved as to form and substance by, and, with surety or sureties satisfactory to the Maritime Administration of the Department of Commerce, the condition of said bond being that the Operator shall, during the term of this Agreement, duly pay to the Administration the rental above specified upon the respective dates therein appointed for payment thereof and shall, during the term of this Agreement, duly observe and perform all and singular the covenants, agreements and conditions herein contained to be observed and performed by the Operator. The original of such bond shall be delivered to the Chief, Division of Ports and Facilities, Maritime Administration, Department of Commerce, Washington 25, D. C.

Article XIII

Beneficiaries

No Member of or Delegate to Congress, nor Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise thereupon except as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat. 1109).

Article XIV

Waiver of Defaults

A. No receipt of moneys by the Administration from the Operator after the termination of this agreement in any lawful manner, shall reinstate, continue or extend, the term of this Agreement or affect any notice theretofore given to
688. Operator, or operate on a waiver of the rights of the Administration to enforce the payment of any rental or rentals then due or thereafter falling due.

B. The failure of the Administration to enforce any agreement, condition, covenant or term, by reason of its breach by the Operator after notice had, shall not be deemed to void or affect the right of the Administration to enforce the same or any other agreement, condition, covenant or term on the occasion of a subsequent default or breach.

C. It is expressly covenanted that the rights and remedies given to the Administration in this Agreement are distinct, separate and cumulative remedies, and that no one of them whether or not exercised by the Administration, shall be deemed to be in exclusion of any of the others.

Article XV

Optional Termination

This Agreement may be terminated by either party hereto at any time by giving unto the other party notice in writing at least thirty (30) days prior to the date of such termination.

Article XVI

Notice

A. Any notice to or demand upon the Operator shall be conclusively deemed to have been sufficiently given if delivered at the office of the Operator at _____ or deposited in the United States mails in the City of Washington, D. C., or elsewhere, in a sealed, postage-prepaid or franked envelope, addressed to _____, or such other address as the Operator shall subsequently specify in writing to the Administration for such purpose.

B. All papers required to be delivered to the Administration shall, unless otherwise specified herein or subsequently specified in writing to the Operator, be delivered to the Maritime Administration of the Department of Commerce, Washington 25, D. C., and any notice to or demand upon the Administration shall be conclusively deemed to have been sufficiently given by being delivered at the office of the Secretary of the Maritime Administration of the Department of Commerce, in Washington, D. C., or deposited in the United States mails in the City of _____, or elsewhere, in a sealed, postage prepaid envelope, addressed to the Secretary of the Maritime Administration of the Department of Commerce at Washington 25, D. C., or at such other address as the Administration shall subsequently specify in writing to the Operator for such purpose.

C. Any notice to or demand upon the Administration or the Operator may be given by telegraph, but such notice, or demand shall be effective only upon receipt thereof by a representative of the Operator, or by the Secretary of the Maritime Administration of the Department of Commerce, as the case may be.

Article XVII

Successors and Assigns

689 The agreements, conditions, covenants and terms herein contained shall in every case apply to, be binding upon and inure to the benefit of the respective parties hereto and to their successors and assigns with the same force and effect as specifically mentioned in each instance where the Administration or Operator is named; provided, however, that no assignment by the Operator, in violation of the provisions of this Agreement shall vest in any such assignee any right or interest.

Article XVIII

Default

This Agreement is entered into upon the express condition that, upon the occurrence of any of the following events of default, that is to say; non-payment of the rents reserved herein, or any portion thereof by the Operator, as and when the same shall become due and payable; non-payment of any of the taxes, charges or expenses or any other sum or sums of money required to be paid by the Operator hereunder when the same shall become due and payable; default by the Operator in the performance of any of the other agreements, conditions, covenants or terms contained herein, if such default shall continue for a period of thirty days after notice (specifying such default) shall have been given by the Administration to the Operator; if the Operator shall file a petition in bankruptcy, become insolvent, be dissolved or be adjudged bankrupt or shall make a general assignment for the benefit of its creditors or shall lose its charter by forfeiture or otherwise, or if a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law, or Equity proceedings, and whether temporary or permanent, shall be appointed for any vessel or for the property of the Operator; or if a petition for reorganization of the Operator under the Bankruptcy Act be filed by the Operator, or if such petition be filed by creditors and the same is approved by the Court; or if reorganization of the Operator under said act is approved by the Court, whether proposed by a creditor,

a stockholder or any other person whomsoever or if the Operator shall abandon the premises, then and in any such event all outstanding rentals shall become due and payable and, at the option of the Administration, the Agreement shall be terminated by written notice to the Operator and all of the right, title and interest of the Operator hereunder, shall thereupon determine and be and become void; and the Administration may remove all persons therefrom, to have, hold and enjoy the premises and property; and the Operator hereby waives any and all right to reinstate or to redeem this Agreement; Provided Further, that the liability of the Operator to pay the rental above specified and all other sums which it is bound by the terms of this Agreement to pay, shall remain unaffected by the termination of this Agreement.

Article XIX

Appropriations

The Administration shall perform any of the terms and conditions of this Agreement, on its part to be performed provided adequate appropriations are available therefor during any fiscal year of the term of this Agreement.

690 In Witness Whereof, the parties hereto have caused these presents to be executed in sextuplicate by their respective officers, duly authorized, and their separate seals to be hereunto affixed as of the day and year first above written.

UNITED STATES OF AMERICA

By: DEPARTMENT OF COMMERCE
(MARITIME ADMINISTRATION)

By: (S.) HOWARD J. MARSDAN
Chief, Division of Ports and Facilities

Witness:

(S.) D. E. JONES

STEVENSON & YOUNG, INC.

H. D. STEVENSON

H. D. STEVENSON, PRES.

(Seal)

Attest:

(S.) R. W. FARRELL
Secretary

Approved as to form:

(A) JOHN F. HARRELL
for: *Assistant General Counsel,
Maritime Administration*

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EXHIBIT 8

NORFOLK TERMINALS

Division of
Stevenson & Young, Inc.
Army Base
Norfolk 5, Virginia

New York Office
140 Cedar St.
New York 6, N. Y.
Re 2-2437

Cable Add:

Lapsis, New York
All codes used

April 10, 1951

Norfolk Office
21188-Pres & Mgr.
21177-Main Off.
24926-Pier Supt.
22030-Tob. Dept.
21513-Tob. Whse.

Transportation Officer,
North East Project,
61 Broadway,
New York, N. Y.

Dear Sir:

This company, as terminal operator of the Army Base, under contract with the U. S. Maritime Administration, has and is, requesting one copy of all incoming freight notices on rail freight destined to Project "Bluejay".

The purpose for this request is that information on these documents will be required by either us, or our successors, at the time this cargo moves out by ocean vessel. This cargo is entitled to wharfage, and in the case of box car freight, is entitled to wharfage and handling allowances. These allowances are payable to the terminal operator and are included in the export freight rate. Unless the terminal allowances are paid the terminal operator, the terminal operator will be required to assess these charges against the Department of the Army.

The railroads will not pay terminal allowances to any owner of cargo. So, in order to collect these allowances and save the govern-

ment this allowance provided for in the export rate, we will need these documents to support our claims.

Yours very truly,

NORFOLK TERMINALS
Division of
STEVENSON & YOUNG, INC.,

(S.) R. W. FARRELL,
R. W. Farrell,
Manager.

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EXHIBIT 9

Statement Showing Chronological History of the Army Base Piers at Norfolk,
Virginia, From 1918 to March 1952

<p>From date of construction in 1917-1918 to 20 November, 1919</p>	<p>Army Base Piers constructed by the Federal Government and used during World War I, exclusively by the United States Army for movement of property and personnel of the military establishment.</p>
<p>20 November 1919</p>	<p>Lease agreement executed between United States Government (War Department) and City of Norfolk, for use of Pier 2, and warehouse space equal to two warehouses for commercial operations under a Port Director for the City of Norfolk.</p>
<p>10 August 1920</p>	<p>Agreement of 20 November 1919 cancelled by new agreement between Secretary of War and City of Norfolk, Va. granting City right to use Pier 2 and suitable warehouse space adjacent thereto, with right to use Pier 1 under the same terms and conditions as Pier 2, when available. City granted right to use Railroad tracks at Base. City of Norfolk filed a tariff naming charges for terminal services, which was suspended by I. C. C. in I&S Docket No. 1230. (59 ICC 488)</p>
<p>21 September 1920</p>	<p>Railroads executed contract with City of Norfolk to make available for public use, facilities at Army Supply Base, Norfolk, Va. known as "Municipal Piers", on basis of the same rules, regulations, wharfage and handling charges, as published by the carriers over their own terminals. The contract provides (Article 18) "the carriers and the Belt Line will handle traffic for the U. S. Government at the Army Supply Base at the same rates as charged others for similar service at the Army Supply Base".</p>
<p>13 December 1920</p>	<p>The Interstate Commerce Commission ordered stricken from its files, schedules filed by the City of Norfolk, Va. naming charges for terminal services to be performed by it at that port in connection with interstate or foreign commerce. (59 ICC 488) "The tracks at the municipal piers extend 1.5 miles east to a connection with the Norfolk & Portsmouth Belt Line, hereinafter referred to as the Belt, which is owned equally by the eight line-haul carriers serving the respondent (City of Norfolk, Va.). They also connect with the Belt on the north at a point about 1,000 feet from the water line. The Belt operates from its eastern connection over the municipal tracks, which it has leased from respondent."</p>

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EXHIBIT 9—Continued

- ent, and has filed a tariff establishing switching charges from, to and within these municipal terminals. It is stated of record that the line-haul carriers, which were not represented at the hearing, will publish absorption tariffs to take care of the Belt's switching charges and also absorb up to 4 cents per 100 pounds of the charges proposed to be imposed by the respondent for wharfage and unloading of export or loading of import traffic." (Emphasis added) (59 ICC 488,489).
- 1 September 1925 The Norfolk Tidewater Terminals, Inc. took over the operation of the Army Supply Base, as a terminal operator, and leased the terminal from the United States Shipping Board, making a contract with the City of Norfolk to operate the terminal facilities.
- 7 June 1927 Norfolk Tidewater Terminals Inc. executed a joint agreement with Atlantic Coast Line, Norfolk Southern, Seaboard Air Line and Southern Railway, to act as terminal agents for those lines, at Army Base Piers.
- 30 June 1940 Transport, Trading & Terminal Corporation leased the Army Supply Base piers from the U. S. Maritime Commission, under terms similar to those agreed to by the Norfolk Tidewater Terminals Inc.
- 15 June 1942 War Department took over operation of Army Base Piers at Norfolk, Va., and continued such operation during World War II, as Hampton Roads Port of Embarkation. Operation of Pier 1 and one-half of Pier taken over by Army, the remaining one-half of Pier 2 being taken over by the Navy.
- 17 June 1942 Hampton Roads Port of Embarkation made request upon carriers to amend tariffs to allow wharfage and handling charges to Government.
- 7 July 1943 Carriers denied request to accord wharfage and handling allowance on Government freight moving through Army Base Piers.
- 15 April 1944 Complaint (I. C. C. No. 29117) filed with Interstate Commerce Commission by United States.
- 694
- 1 April 1947 Norfolk Terminals Division of Stevenson & Young, Inc. assumed operation of Army Base Pier 1 and one-half of Pier 2, as a terminal operator under contract with the Government and with the railroads, for handling export, import coastwise and inter-coastal shipments. This firm has remained in continuous operation at Army Base Piers 1 and 2 since that time.
- 30 April 1951 Permit granted by Maritime Administration of the Department of Commerce to Department of the Army for operation and maintenance of certain portion of "The Maritime Administration Terminal" (Army Base Piers 1 and 2 and adjoining warehouses and land and tracks), commencing at midnight April 30, 1951. Paragraph 11 of said permit provided for sub-permit by Army to Maritime Administration of following: All of Sections A, B, C, D, E, F, G and H of Warehouse No. 5; All of Section C, second floor, Warehouse No. 4; Sufficient land for storage purposes in connection with Maritime

EXHIBIT 9—Continued

Administration warehouse activities upon the premises, as designated in the sub-permit.

Contract executed between Department of the Army, Transportation Corps, and Stevenson & Young, Inc. for Terminal Operations and Intransit Storage Services; for Stevedore Checking & Clerking Services at Army Base Piers, said permit provided for use by Stevenson & Young of certain portions of Warehouses at the Base for offices, storage space, maintenance shops, etc.

1 January 1952

Contract between the United States of America, represented by the Maritime Administration of the Department of Commerce, on the one hand, and Stevenson & Young, Inc. executed to continue operation of portions of Army Base Piers 1 and 2 as a public commercial marine terminal, utilizing for such commercial operations various areas permitted to the Department of the Army and Navy, as may from time to time be made available for such purposes by the Departments of the Army and Navy.

Contracts re-executed between Department of the Army and Stevenson & Young Inc. for Terminal Operations and Intransit Storage Services, Stevedoring and Clerking Services etc. by latter for the former, for year 1952.

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UNITED STATES OF AMERICA VS.

(Here follows 1 Paster, side folios 695, 696)

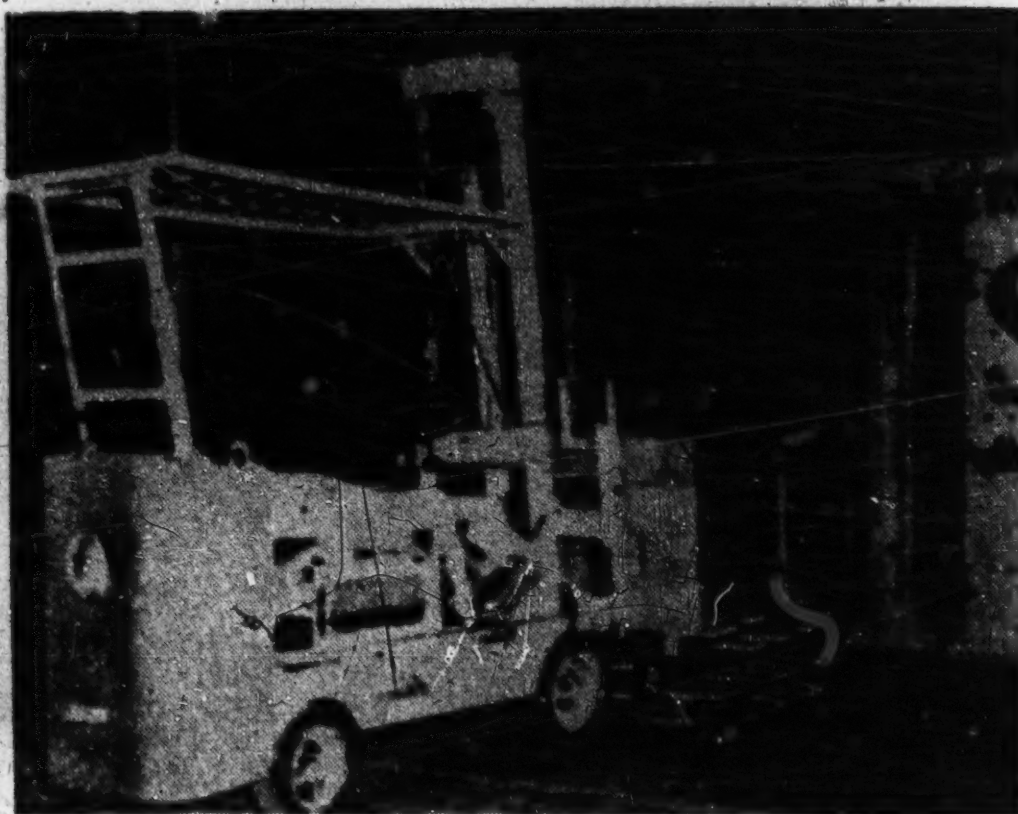
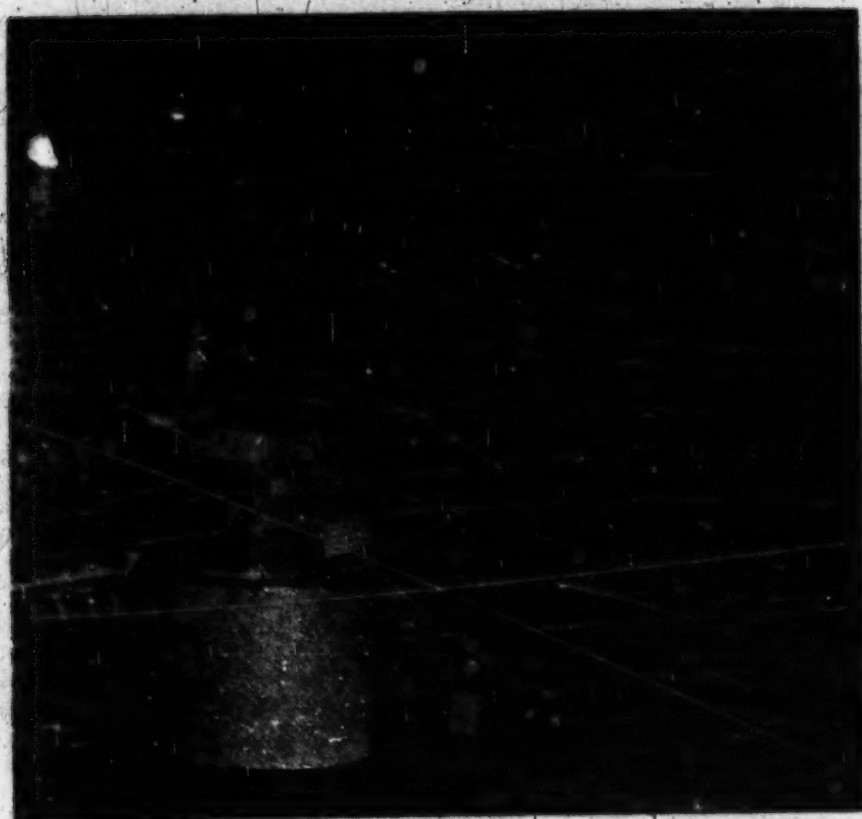
STATEMENT

Showing the Names of Terminal Operators at Army Base Piers, Norfolk, Virginia, Who Have Been Shown in Tariffs on Terminal Railroads with Reference to Wharfage, Handling and Terminal Services Included in the Line-Haul Rates.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Name of Operator	Norfolk & Western	Norfolk Southern	Pennsylvania RR	Southern Railway	Virginian Railway	Norfolk & Portsmouth Belt Line	Atlantic & Danville Ry
Municipal Terminals	From: 7 Apr 1921 Until: 15 Nov 1927 N&W ICC 6789 N&W ICC 7020 N&W ICC 7604	From: 4 Nov 1921 Until: 25 Nov 1926 NS ICC A-25	From: 15 Apr 1921 Until: 15 Jan 1926 NYP&N ICC 3328 PRR ICC GO 11713 PRR ICC GO 14285	From: 25 Aug 1921 Until: 26 Dec 1935 SOU ICC A-8699	From: 7 Apr 1921 Until: 22 Dec 1925 VGN ICC 1449 VGN ICC 1465 VGN ICC 1536 VGN ICC 1599 VGN ICC 1606 VGN ICC 1688	From: 1 July 1923 Until: 22 Dec 1925 N&PBL ICC 69	
Norfolk Tidewater Terminals, Inc.	From: 20 Feb 1926 Until: 1 July 1940 N&W ICC 7604 N&W ICC 8188 N&W ICC 8783 N&W ICC 8912	From: 25 Feb 1926 Until: 1 July 1940 NS ICC A-25 NS ICC A-523 NS ICC A-938 NS ICC A-1055	From: 15 Jan 1926 Until: 1 July 1940 PRR ICC GO 14382 PRR ICC GO 14483 PRR ICC 34 PRR ICC 447 PRR ICC 750 PRR ICC 1149 PRR ICC 1490 PRR ICC 1910 PRR ICC 2309	From: 22 May 1929 Until: 1 July 1940 SOU ICC A-8699 SOU ICC A-10622 SOU ICC A-10715	From: 22 Dec 1925 Until: 1 July 1940 VGN ICC 1716 VGN ICC 1719 VGN ICC 1721 VGN ICC 1725 VGN ICC 1762 VGN ICC 1826 VGN ICC 1994 VGN ICC 2052 VGN ICC 2084	From: 22 Dec 1925 Until: 1 July 1940 N&PBL ICC 78 N&PBL ICC 86 N&PBL ICC 92 N&PBL ICC 98 N&PBL ICC 103 N&PBL ICC 105	
Transport Trading & Terminal Corporation	From: 1 July 1940 Until: 15 Sep 1942 N&W ICC 8912 N&W ICC 9101	From: 1 July 1940 Until: 18 Nov 1943 NS ICC A-1055 NS ICC A-1148	From: 1 July 1940 Until: 5 Apr 1947 PRR ICC 2309 PRR ICC 2508 PRR ICC 2613 PRR ICC 2851	From: 1 July 1940 Until: 20 Dec 1944 SOU ICC A-11013 SOU ICC A-10937 SOU ICC A-10921 SOU ICC A-10892 SOU ICC A-10715	From: 1 July 1940 Until: 3 July 1946 VGN ICC 2084 VGN ICC 2196	From: 1 July 1940 Until: 3 July 1946 N&PBL ICC 105	
Hampton Roads Terminals, Inc.	From: 3 July 1946 Until: 1 Apr 1947 N&W ICC 9179	Not shown in Tariffs of this Carrier	Not shown in Tariffs of this Carrier	Not shown in Tariffs of this Carrier	From: 15 Nov 1946 Until: 1 Apr 1947 VGN ICC 2196 VGN ICC 2258	From: 3 July 1946 Until: 1 Apr 1947 N&PBL ICC 105	
Norfolk Terminals Division of Stevenson & Young, Inc.	From: 1 Apr 1947 Until: Present N&W ICC 9179	From: 1 Apr 1947 Until: Present NS ICC A-1148	From: 5 Apr 1947 Until: Present PRR ICC 2613 PRR ICC 2851 PRR ICC 3007	From: 12 May 1947 Until: Present SOU ICC A-11065 SOU ICC A-11248	From: 1 Apr 1947 Until: Present VGN ICC 2258	From: 1 Apr 1947 Until: Present N&PBL ICC 105	Footnote

Footnote: Atlantic & Danville Ry Tariff ICC 4 from 15 Nov 1951 Until Present. Prior to this date see Southern Railway tariffs.

OF SHIPS AND CARGO...



Modern technique and handling equipment offer rapid discharge from rail to pier . . .

Serving Hampton Roads . . .

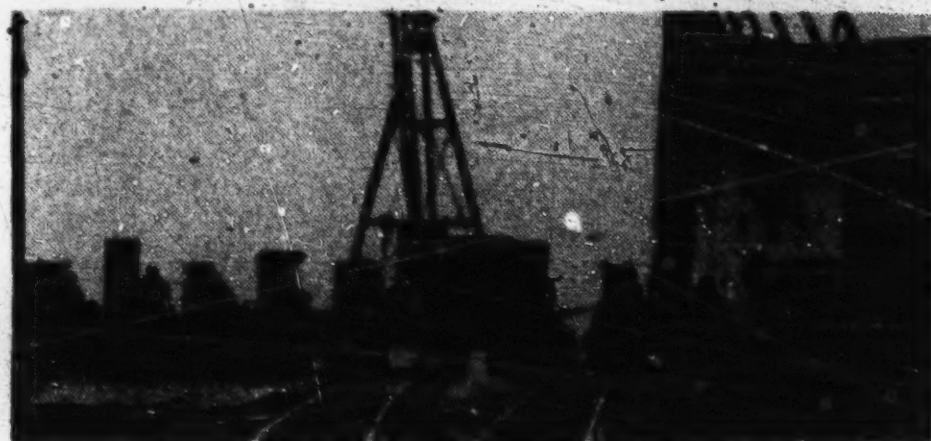
NORFOLK TERMINALS is reached by all eight rail lines entering Norfolk. The Norfolk & Portsmouth Belt Line Railroad maintains a joint agency on the premises, speeding service. The Virginian Railroad serves this terminal over their own tracks.

Three commercial berths are available for private commercial steamship operators' use.

Warehouse space is approximately 175,000 square feet for short-term transit storage available for use by commercial cargoes.

NORFOLK TERMINALS offer ideal facilities for handling dry cargo—either bulk or package. Modern handling equipment is available for package, bulk, or heavy lift cargo.

With modern facilities available for quick dispatch of Ships and Cargo . . . **U S E :**



Over 300 pieces of mechanized cargo handling equipment assures quick transfer of cargoes . . .



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Statement Showing Number of Loaded Cars Received and Forwarded at
 Hampton Roads Port of Embarkation, Norfolk, Va. from
 1 May to 31 December, 1951

Carriers	Received	Forwarded	Total	Percent
Atlantic Coast Line.....	702	133	835	.061
Atlantic & Danville.....	46	48	94	.007
Belt Line.....	228	301	529	.039
Chesapeake and Ohio.....	486	96	582	.042
Norfolk & Western.....	2554	554	3108	.227
Norfolk Southern.....	119	13	132	.010
Pennsylvania.....	3499	150	3649	.266
Seaboard Air Line.....	514	47	561	.040
Southern Ry.....	277	78	355	.026
Virginian Ry.....	3728	141	3869	.282
<hr/>				
Total.....	12153	1561	13714	100.0%
Percent.....	88.6%	11.4%		100 %

Summary of Cars Received Via

Norfolk & Western Ry.....	2,554
Pennsylvania RR.....	3,499
Virginian Railway.....	3,728

Total.....	9,781	80.5% of total cars received
------------	-------	---------------------------------

Railroad serves this terminal over their own tracks.

Three commercial berths are available for private commercial steamship operators' use.

Warehouse space is approximately 175,000 square feet for short-term transit storage available for use by commercial cargoes.

NORFOLK TERMINALS offer ideal facilities for handling dry cargo—either bulk or package. Modern handling equipment is available for package, bulk, or heavy lift cargo.

With modern facilities available for quick dispatch of Ships and Cargo . . . U S E :



Over 300 pieces of mechanized cargo handling equipment assures quick transfer of cargoes . . .



Above Army automobiles ready for shipment overseas.

NORFOLK TERMINALS

Division of

STEVENSON & YOUNG, INC.

275 40th Street, Brooklyn, N. Y.

7737 Hampton Blvd., Army Base, Norfolk 5, Va.

January, 1952

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(Here follow 2 Pastors, side folios 698, 699)

STATEMENT

Showing Typical *Commercial Export Shipments* Unloaded by Norfolk Terminals, Division of Stevenson & Young, Inc. at Hampton Roads Port of Embarkation, Norfolk, Virginia, and Revenue per Car Mile, Before and After Deducting Wharfage and Handling Expenses

Rates in Cents per Hundred Pounds

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Item	Commodity	Origin	Delivering Carrier	Miles Short Line	Rate	Minimum Weight	Actual Weight	Revenue Per Car (Gross) Dollars	Revenue Per Car Mile (Gross) Cents	Wharfage Allowance Per Car Dollars(a)	Handling Allowance Per Car Dollars(b)	Total Allowance Per Car Dollars	Revenue Per Car (Net) Dollars	Revenue Per Car Mile (Net) Cents
1	Oak Wagon Plank	Staunton, Va.	N&W	223	34-F	34000	78460	266.76	119.623	9.81	29.42	39.23	227.53	102.031
2	Cocoa Bean Hulls	Elizabethtown, Pa.	P.R.R.	293	37-A	40000	58000	214.60	73.242	7.25	21.75	29.00	185.60	63.345
3	Slabs, Nickle	Huntington, W. Va.	N&W	505	93-E	36000	35927	334.80	66.297	4.49	13.47	17.96	316.84	62.741
4	Auto Parts	Lordstown, Ohio	P.R.R.	582	82-B	30000	58482	479.55	82.397	7.31	21.93	29.24	450.31	77.373
5	Knit Goods	Columbus, Ohio	Virginian	632	184-B	12000	36200	666.08	105.392	4.53	13.57	18.10	647.98	102.528
6	Tobacco	Lexington, Ky.	Southern	643	84-D	18000	21038	176.72	27.483	2.62	7.89	10.51	166.21	25.849
7	Refrigerators	Richmond, Ind.	N&W	706	129-B	22000	19380(c)	309.34	43.816	2.42	7.27	9.69	299.65	42.443
8	Windshields, Wiper Arms, Brushes, Generators	Toledo, Ohio	Virginian	739	172-B	20000	32944	566.64	76.677	4.12	12.35	16.47	550.17	74.448
9	Tobacco	Louisville, Ky.	N&W	785	84-D	18000	20326	170.74	21.750	2.54	7.62	10.16	160.58	20.456
10	Corn Syrup	Chicago, Ill.	N&W	914	61-D	36000	59261	361.49	39.550	7.41	22.22	29.63	331.86	36.309
11	Corn Starch	Pekin, Illinois	Virginian	969	44-C	60000	62150	273.46	28.221	7.77	23.31	31.08	242.38	25.013
12	Corn Starch	Peoria, Illinois	N&W	970	44-C	60000	62150	273.46	28.192	7.77	23.31	31.08	242.38	24.988

Tariff Authorities for Rates

- A C. W. Boin's ICC A-334 (T.L.T.T.B. 64)
- B L. C. Schuldt's ICC 3642 (C.T.R.T.B. 490-B)
- C L. C. Schuldt's ICC 4403 (C.T.R.T.B. 245-H)
- D L. C. Schuldt's ICC 3758 (C.T.R.T.B. 218-N)
- E C. W. Boin's ICC A-694 (T.L.T.T.B. 80-C)
- F C. W. Boin's ICC A-339 (T.L.T.T.B. 69)

Explanation of Reference Marks

- (a) Based on 1¼ cents per 100 pounds
- (b) Based on 3¾ cents per 100 pounds
- (c) Includes Ex Parte 175-A Increase

Authority for Distances

Short line distances from ICC Docket 15879
Eastern Class Rate Case

Tariff Authority for Allowances

Penn. R. R. Tariff 1378-J, ICC 3007
Norfolk & Western GF Tariff No. 23-F, ICC No. 9179
Southern Railway System ICC No. A-11248

STATEMENT

Showing rates and earnings on representative shipments of military traffic exported through Hampton Roads Port of Embarkation during the month immediately prior to and immediately after 1 May 1951, before and after deduction of allowances for wharfage and handling.

(Rates and Earnings on Representative Shipments—Continued)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
Item	Commodity	Shipper	From	Route	Miles	Rate	Weight		Revenue		Allowances			Revenue		No. of cars in lot
							Mini- mum per car pounds	Aver- age per car pounds	Per car (gross)	Per car mile (gross)	Wharf- age per car not granted	Hand- ling per car not granted	Total per car not granted	Per car net	Per car mile net	
2	Cotton Yarn	Com.	Lexington, N. C.	18	288	M- 60	45000	22222	270.00	93.750	2.78	8.33	11.11	258.89	89.892	9
3	Toilet Paper	Com.	Rockingham, N. C.	8	293	G- 43	36000	40500	174.15	59.437	5.06	15.19	20.25	153.90	52.526	1
4	Cotton Yarn	Com.	York, S. C.	18	389	M- 70	45000	45000	315.00	80.977	5.62	16.88	22.50	292.50	75.193	1
5	Paper, typewriter, bond	A.D.	Columbus, Ohio	2	664	D- 59	36000	77490	457.19	68.854	9.69	29.06	38.75	418.44	63.018	2
6	Case wrapping bags	A.D.	Columbus, Ohio	2	664	A- 217	AQ	34870	756.68	113.958	4.36	13.08	17.44	739.24	111.331	1
7	Clothing	A.D.	Columbus, Ohio	2	664	A- 184	12000R	46095	848.15	127.733	5.76	17.29	23.05	825.10	124.262	2
8	Tower Antenna	A.D.	Avon, Ky.	6	674	L- 123	20000R	39870	490.40	72.760	4.98	14.95	19.93	470.47	69.803	1
8½	Radio Trans & Rec Set	A.D.	Avon, Ky.	6	674	L- 158	18000R	64160	1012.78	150.264	8.01	24.04	32.05	980.73	145.509	1
9	Rivets and bolts	A.D.	Marion, Ohio	19	744	H- 61	45000	30712	274.50	36.895	3.84	11.52	15.36	259.14	34.830	1
10	Springs, Auto, Elliptic, steel	A.D.	Toledo, Ohio	2	783	E- 73	60000	72880	532.10	67.957	9.11	27.33	36.44	495.66	63.303	1
11	Auto Parts	A.D.	Toledo, Ohio	2	783	A- 85	30000	52017	442.14	56.467	6.50	19.51	26.01	416.13	53.146	5
12	Printing Press	Com.	Dayton, Ohio	5	786	A- 94	24000R	33000	310.20	39.466	4.12	12.38	16.50	293.70	37.366	1
13	Auto Parts	A.D.	Toledo, Ohio	12	795	A- 85	30000	57299	487.04	61.263	7.16	21.49	28.65	458.39	57.659	4
14	Auto Axles with attachments	A.D.	Toledo, Ohio	11	832	A- 85	30000	37900	322.15	38.720	4.74	14.21	18.95	303.20	36.442	1
15	Radiator cores	A.D.	Toledo, Ohio	9	868	A- 135	24000R	39890	538.52	62.041	4.99	14.96	19.95	518.57	59.743	6
16	Electric Motors	A.D.	Toledo, Ohio	9	868	A- 98	30000	65344	640.37	73.775	8.17	24.50	32.67	607.70	70.012	1
17	Auto Parts	A.D.	Toledo, Ohio	9	868	A- 85	30000	52970	450.25	51.872	6.62	19.86	26.48	423.77	48.821	1
18	Engines, Int Combustion	Com.	Detroit, Mich.	9	903	E- 73	50000	76725	560.09	62.025	9.59	28.77	38.36	521.73	57.777	4
19	Truck Fork Pull Motors	A.D.	Jeffersonville, Ind.	19	930	A- 109	24000R	62938	686.02	73.766	7.87	23.60	31.47	654.55	70.382	2
20	Printing Paper	A.D.	Memphis, Tenn.	17	1006	F- 79	36000	66000	521.40	51.829	8.25	24.75	33.00	488.40	48.549	2
21	Canvas Tarpaulins	A.D.	Memphis, Tenn.	17	1006	J- 198	24000R	53401	1057.34	105.103	6.68	20.02	26.70	1030.64	102.449	4
22	Batteries, Elec, Drycell, Spent	A.D.	Decatur, Ill.	15	1021	A- 180	36000	47306	378.45	37.067	5.91	17.74	23.65	354.80	34.750	1
23	Sheet, Steel galv	A.D.	Memphis, Tenn.	6	1062	K- 107	36000	44630	477.54	44.966	5.58	16.74	22.32	455.22	42.864	1
24	Paint, NOIRN	A.D.	Granite City, Ill.	19	1093	A- 110	36000	50167	551.84	50.489	6.27	18.81	25.08	526.76	48.194	7
25	Tank Parts	A.D.	Rock Island, Ill.	14	1164	A- 127	24000R	66143	840.02	72.167	8.27	24.80	33.07	806.95	69.326	1

(Here follow 3 Photolithographs, side folios 700, 701, 702)

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PART 14

STATEMENT

Of Rules and Regulations Governing Absorption of Wharfage and Handling Charges of Norfolk and Western Railway Company at Norfolk, Virginia as Published in Tariff G. F. 23-F, ICC No. 9179

704

Rule 5. (Original) Definition of the Term "Handling"

The term "Handling" as used herein, except as otherwise provided, mean the legitimate charge for services involved in the physical movement of freight between the pier warehouse floor and cars, highway vehicles, or harbor and river craft incidental to the interchange of freight between such units of transport and vessels plying in export, import, intercoastal and coastwise services. (See Exceptions (a) and (b) below)

Exceptions

(a) No handling charges will be assessed on traffic loaded on, or unloaded from, open top cars placed alongside ships on marginal tracks by ship's tackle or crane direct, and when no handling is performed by or for the account of the Norfolk and Western Railway Co.

(b) On vegetable, fish, sea animal oils, or other commodities requiring tank cars, transfer of such commodities from ships to tank cars, or from tank cars to ships, must be arranged for by shippers, consignees, or owners, of the property, and at their own expense.

Rule 6. (Original) Definition of the Term "Wharfage"

The term "wharfage" as used herein, means the use of wharves in the receipt of traffic from or delivery of traffic to ships, barges or other water craft while lying alongside the wharf properties of the Norfolk and Western Railway or other wharf properties with which the Norfolk and Western Railway has arrangements or contracts including traffic received from or delivery to barges, lighters or other water craft lying alongside of such vessels or taken from or delivered to the water.

Rule 37 (Cancels Rule 37, Page 10 of Tariff)

Allowances and Absorptions on Shipments Moving in Connection with Norfolk and Western Railway)

(Supplement No. 152 Effective 9/15/48)

Cancel. Apply provisions shown in Section No. 6 of Tariff, as amended. (85760).

Reduction

(This Rule prior to cancellation read as follows:)

Rule 37 (Original)

Allowances and Absorptions of Shipments Moving in Connection with Norfolk and Western Railway

For the use of wharfs, warehouses, slips, channels, tracks and approaches, and other facilities at and for other services rendered by the Terminals referred to in Note 6 taking Groups B, C, C, I, and K, as agent for the Norfolk and Western Railway, the Norfolk and Western Railway makes allowances and absorptions as published in Section 6 herein.

Announcing—

Continuance of Commercial Operations



at NORFOLK TERMINALS

ALTHOUGH large segments of Norfolk Terminals are actively serving the armed forces during the present national emergency, this great port facility, serving Hampton Roads, remains open to commercial traffic.

Three commercial berths are available for private commercial steamship operators' use.

Approximately 175,000 square feet of warehouse space for short-term transit storage is available for use by commercial

& Portsmouth Beltline Railroad. The Virginian Railroad serves this terminal over their own tracks. Covered concrete piers are completely sprinklered for protection of cargo against fire, as are brick-and-concrete warehouses serving the piers.

Norfolk Terminals offer ideal facilities for all manner of dry cargo, either bulk or package. A fleet of modern handling equipment is available for package, bulk, or heavy lift

ALTHOUGH large segments of Norfolk Terminals are actively serving the armed forces during the present national emergency, this great port facility, serving Hampton Roads, remains open to commercial traffic.

Three commercial berths are available for private commercial steamship operators' use.

Approximately 175,000 square feet of warehouse space for short-term transit storage is available for use by commercial cargoes.

Serving Hampton Roads, Norfolk Terminals is reached by all eight rail lines entering Norfolk with fast service by the Norfolk

& Portsmouth Beltline Railroad. The Virginian Railroad serves this terminal over their own tracks. Covered concrete piers are completely sprinklered for protection of cargo against fire, as are brick-and-concrete warehouses serving the piers.

Norfolk Terminals offer ideal facilities for all manner of dry cargo, either bulk or package. A fleet of modern handling equipment is available for package, bulk, or heavy lift cargo.

Norfolk Terminals, with splendid facilities available for commercial traffic, solicits your business!

Serving
**HAMPTON
ROADS**

NORFOLK TERMINALS

STEVENSON & YOUNG, INC.

DIVISION OF

FOR QUICK DISPATCH

ON
THE

ATLANTIC COAST

USE

NORFOLK TERMINALS

Heavy lift cranes and wide
aprons expedite cargo move-
ments



NORFOLK TERMINALS

CONTINUE COMMERCIAL OPERATIONS . . .
although large segments of this great Port
Facility are actively serving the armed forces
during the present national emergency . . .
Norfolk Terminals . . . remains open to com-
mercial traffic.

The Nautical Gazette

(B) Note 6. (Cancels Note 6, Page 12 of Tariff and Page 8 of Supplement No. 159)
(Supplement No. 191 Effective 7/31/51)

List of Terminals Showing Location and Group

(Applicable Only Where Reference is Made Hereto)

Terminals	Railroad		
	Location	Group	Authority
Atlantic Coast Line R. R. Piers, Pinnars Point, Va.	ACL	A	85454
Imperial Tobacco Co., Ltd. (Berkley Warhouses and Tracks), Norfolk, Va.	NS	B	85760-6
Lambert's Point Docks, Incorporated (Lambert Point Division), Norfolk, Va.	N&W	D	85760-1
Lambert's Point Docks, Inc. (Sewells Point Division), Norfolk, Va.	N&PBL	E	85760-1
Merchants Contracting Corporation, Norfolk, Va.	N&W	I	85760-3
Municipal Grain Elevator (owned and operated by Norfolk and Western Railway), Norfolk, Va.	N&PBL	F	85447
Norfolk Southern Railway Company's Berkley Terminals, Norfolk, Va.	NS	G	85454
Norfolk Terminals, Division of Stevenson & Young, Incorporated, Norfolk, Va.	N&PBL	E	85760-5
Norfolk Tidewater Terminals, Inc., Pinnars Point (Portsmouth), Va.	Sou.	H	85760-7
Seaboard Air Line Ry, Piers, Portsmouth, Va.	SAL	J	85453
Southern Ry, Piers, Pinnars Point, Va.	Sou.	L	85453

(B) Terminals formerly shown in this Note and not brought forward are hereby canceled, account operation discontinued. (85760)

Section 1 (Original)

(Applicable to or from points designated on Page 13, subject to this section)

Application of Rates

(For Rules and Regulations, see Pages 3 to 11, inclusive)

Except where tariffs lawfully on file with Interstate Commerce Commission or Virginia State Corporation Commission Specifically provide otherwise, the wharfage, handling and terminal charges shown in this section will apply and be included in the transportation charge, except as provided in Note A Below.

Table of Wharfage and/or Handling Charges

Cotton, per 100 pounds	2¼ cents
Live Stock, per 100 pounds	3¾ cents
Lumber, Poles, Ties and Piling (See Note A) per 100 pounds	1 cent
Pig Iron, per ton 2,240 pounds	14 cents
All other freight, per 100 pounds	1 cent

(The above subject to Ex Porte 162—This insertion supplied)

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Section 6 of Supplement 152 Effective 9/15/1948

(Cancels Section 6, Page 25 of Tariff and Page 8 of Supplement No. 59)

Absorption of Wharfage, Handling and Terminal Charges on Export, Import, Intercoastal and Coastwise Traffic When Moving in Connection with N. & W. Ry. Through the Terminals Referred to in this Section

On freight originating at or destined to points designated on page 13 of tariff, as amended, as subject to Section 1, located beyond the Norfolk, Va.; switching district, on which the Norfolk & Western Ry. has received or will receive a road haul, the Norfolk & Western Ry. will absorb in its line-haul rate the wharfage, handling and terminal charges, except the loading charges on lumber, logs, pulpwood, wooden poles, wooden ties, and wooden piling, lawfully published in tariffs on file with the Interstate Commerce Commission and the State Corporation Commission of Virginia, accruing at terminals in Note 6 of the tariff as amended, or as otherwise provided in tariffs lawfully on file with the Interstate Commerce Commission or with the State Corporation Commission of Virginia. (85760)

Reduction

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PART 16

STATEMENT

Showing Wharfage and Handling Charges and Absorptions Thereof at Norfolk, Virginia, as Published by the Pennsylvania Railroad Company in Tariff 1378-J ICC No. 3007

Rule B (Original Tariff; Effective 1 February 1951) Export Freight

The rules shown in this tariff covering Export Freight or Freight destined to Foreign Ports will apply on property consigned for export to all destinations not located in—

- The Continental United States of America (including Alaska)
- Dominion of Canada
- Islands of Miquelon or St. Pierre (See Note)
- Newfoundland (See Note)

Note.—Export rules shall apply to these points to the extent they are presently provided for on specific commodities as provided for in tariffs lawfully on file with the Interstate Commerce Commission.

Supplement 8, Effective 1 January 1952

Except as otherwise provided herein, the rules shown in this tariff and as amended covering export freight, will apply on property for export to all destinations not located in:

- The Continental United States of America (including Alaska)
- Dominion of Canada
- Islands of Miquelon and St. Pierre (See Note)
- Newfoundland (See Note)

When exported direct from port stations named in this tariff or as amended, and will apply, except as otherwise provided herein, on traffic which does not leave possession of the carrier, and is delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port or after storage or transit has been accorded by the carriers under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply, which traffic is handled direct from carrier's stations to steamship docks and on which required proof of exportation is given.

Note.—Export rules shall apply to these points to the extent they are presently provided for on specific commodities as provided in the Agency and individual lines' tariffs applicable thereto.

Rule 47

Wharfage and Handling Charges

Item 305 Norfolk Terminals Division of Stevenson & Young, Inc.

Except as indicated in Items 375, 380 and 385 and unless otherwise provided in this tariff or in other tariffs lawfully on file with the Interstate Commerce Commission, wharfage and handling charges published in Norfolk and Portsmouth Belt Line Railroad Company Tariff No. 6-J, I.C.C. 105, will be included in the freight rate to or from Norfolk, Va., on Export, Import, Intercoastal and Coastwise freight traffic, any quantity, other than traffic moving on joint through rates via regular coastwise lines operating to and from North Atlantic Ports, subject to the following conditions:

- (a) When the freight rate from Norfolk, Va., on inbound traffic or to Norfolk, Va., on outbound traffic is 19 cents per 100 pounds (Rule 53) or higher.
- (b) When receipt from or delivery to vessel is in rail service over wharf properties owned or leased by Norfolk Terminals Division of Stevenson & Young, Inc., and operated by Norfolk Terminals Division of Stevenson & Young, Inc., as a public terminal facility of the rail carriers.
- (c) When Norfolk Terminals Division of Stevenson & Young, Inc., acting in the capacity of a public wharfinger, furnishes wharfage facilities and performs handling services for account of and as agent for the rail carriers of traffic that is neither consigned to or from nor owned or controlled by Norfolk Terminals Division of Stevenson & Young, Inc.

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Item 305—Continued

Compensation

The Pennsylvania Railroad Company will pay to Norfolk Terminals Division of Stevenson & Young, Inc., as its agent, for wharfage facilities furnished and handling services performed on traffic described and conforming to the conditions specified above, compensation in the following amounts in cents per 100 pounds, except as otherwise provided.

	Wharfage	Handling
Freight in open top cars, except as otherwise indicated	1 1/4
Freight in tank cars	1 1/4
Grain in bulk	1 1/4
Import and Unbound Coastwise Lumber and other Forest Products taking Lumber rates and Pulpwood when stowing in open top cars is required	1 1/4	2
All other freight	1 1/4	3 3/4 or 75 cents per ton

Item 310-A, Supplement 1, Effective 10 March 1950 Lincoln Tidewater Terminals, Inc.

Any charge of the Norfolk and Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring, or any service whatever at the Lincoln Tidewater Terminals, Inc., as per Norfolk and Portsmouth Belt Line Railroad Company's Tariff 6-J, I.C.C. 105, will be in addition to the rate to or from Norfolk, Va., except that on export, import, coastwise and intercoastal traffic, any quantity, on which the freight rate is not less than 19 cents per 100 pounds, and handling charge not to exceed 3 3/4 cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except as provided in Items 380 and 385.

Item 315 Municipal Grain Elevator

Any charge of the Norfolk and Portsmouth Belt Line Railroad Company for wharfage, storage, loading, unloading, handling, transferring or any service whatever at the Municipal Grain Elevator, as per Norfolk and Portsmouth Belt Line Railroad Company's Tariff 6-J, I.C.C. 105, will be in addition to the rate to Norfolk, Va., except that on Grain, in carloads, handled through the elevator direct to vessel, wharfage charge of 1 1/4 cents per 100 pounds will be included in the freight rate to Norfolk, Va.

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Item 320 Jones Cold Storage and Terminal Corporation (East Water Street Terminals), Norfolk, Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Jones Cold Storage and Terminal Corporation (East Water Street Terminals), Norfolk, Va., which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.

Item 325 Southgate Terminal Corporation (Norfolk Division Terminals), Norfolk, Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as provided in Items 375, 380 and 385.

Item 330 Security Warehouse Corporation, Norfolk, Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, moving through the Security Warehouse Corporation, Norfolk, Va., which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as provided in Items 375, 380 and 385.

Item 335 Imperial Tobacco Company, Ltd. (Berkley Warehouses and Tracks), Norfolk, Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Imperial Tobacco Company, Ltd. (Berkley Warehouse and Tracks), Norfolk, Va., which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as provided in Items 375, 380 and 385.

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Item 340 H. B. Rogers, Inc. (Portsmouth Division Terminals), Pier No. L, Portsmouth, Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through H. B. Rogers, Inc. (Portsmouth Division Terminals), Pier No. 1, Portsmouth, Va., which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charges of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53), as provided in Norfolk and Portsmouth Belt Line Tariff 6-J, I.C.C. 105, will be included in the freight rate to or from Norfolk, Va., except freight in tank cars and as provided in Items 375, 380 and 385.

Item 345 Pinners Point Terminal (Portsmouth), Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Southern Railway Terminal at Pinners Point (Portsmouth), Va., which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53), or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53) as published in tariffs lawfully on file with the Interstate Commerce Commission, will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.

Item 250 Norfolk Tidewater Terminals, Inc., Pinners Point (Portsmouth), Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, handled through the Norfolk Tidewater Terminals, Inc., at Pinners Point (Portsmouth), Va., which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53), or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53), as published in tariffs lawfully on file with the Interstate Commerce Commission, will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.

Item 355 Lambert Point Terminals (Norfolk & Western Railway Company Piers)

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53), or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{3}{4}$ cents per 100 pounds (Rule 53), will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.

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Item 360 Norfolk Southern Railroad Company's Berkley Terminals (Norfolk), Va.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{1}{4}$ cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.

Item 365 Lambert's Point Dock, Inc.

On Export, Import, Intercoastal and Coastwise traffic, any quantity, which pays the Pennsylvania Railroad Company and its connections 19 cents per 100 pounds (Rule 53) or over, wharfage charge of $1\frac{1}{4}$ cents per 100 pounds and handling charge not to exceed $3\frac{1}{4}$ cents per 100 pounds (Rule 53) will be included in the freight rate to or from Norfolk, Va., except as provided in Items 375, 380 and 385.

Item 370 Merchants' Contracting Corporation

Except as indicated in Items 375, 380 and 385, and unless otherwise provided in this tariff or in other tariffs lawfully on file with the Interstate Commerce Commission or, the Virginia State Corporation Commission, wharfage and handling charges published in Norfolk and Western Railway Co. Tariff No. 23-F, I. C. C. No. 9179, V. C. C. 950, will be included in the freight rate to or from Norfolk, Va., on Export, Import, Intercoastal and Coastwise freight traffic, any quantity, other than traffic moving on joint through rates via regular coastwise lines operating to and from North Atlantic Ports, subject to the following conditions:

- (a) When the freight rate from Norfolk, Va., on inbound traffic or to Norfolk, Va., on outbound traffic is 19 cents per 100 pounds (Rule 53), or higher.
- (b) When receipt from or delivery to vessel is in rail service over wharf properties operated by Merchants' Contracting Corporation as a public terminal facility of the rail carriers.
- (c) When the Merchants' Contracting Corporation, acting in the capacity of a public wharfinger, furnished wharfage facilities and performs handling services for account of and as agent for the rail carriers on traffic that is neither consigned to or from nor owned or controlled by the Merchants' Contracting Corporation or the owner or lessee of the wharf properties.

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Compensation

The Pennsylvania Railroad Company will pay to the Merchants' Contracting Corporation, as its agent, for wharfage facilities furnished and handling services performed on traffic described and conforming to the conditions specified above, compensation in the following amounts in cents per 100 pounds, except as otherwise provided.

	Wharfage	Handling
Freight, in open top cars, except as otherwise indicated	$1\frac{1}{4}$...
Freight in tank cars	$1\frac{1}{4}$...
Grain in bulk	$1\frac{1}{4}$...
Import and Inbound Coastwise Lumber and other Forest Products taking Lumber rates and Pulpwood when stowing in open top cars is required	$1\frac{1}{4}$	2
All other freight	$1\frac{1}{4}$	$3\frac{1}{4}$ or 75 cents per ton

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Item 390.

The switching charge of the Norfolk & Portsmouth Belt Line Railroad Company is absorbed per Pennsylvania Railroad Tariff 1589-D, I. C. C. 2942, V. C. C. 192 (Agent's Index 41).

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PART 19

STATEMENT

Showing Rules, Regulations, Rates and Tariff Provisions of Virginian Railway Company at Norfolk, Va. on Export, Import, Intercoastal and Coastwise Traffic with Reference to Absorption of Wharfage and Handling Charges Published in the Virginian Railway Company Freight Tariff 1813-L, (Effective November 15, 1946, as amended) ICC No. 2258.

General Rules and Regulations

Rule 1

General Application

(a) Charges for the various ports services, viz: Wharfage, handling, storage and other terminal services as outlined herein will be made and collected by the Virginian Railway on all export, import, intercoastal and coastwise traffic delivered to or received from vessels, barges, or other water craft, or by rail over wharf property operated in connection with the Virginian Railway, as may be specifically provided herein, and will be in addition to rates of transportation to or from the ports, except as otherwise provided herein or in tariffs lawfully on file with the Interstate Commerce Commission.

(b) The term "export" or "import" as used herein has reference to all traffic exported to or imported from all foreign countries, including Cuba and insular possessions of the United States (Philippine Islands, Porto Rico, Hawaiian Islands and Virgin Islands); also Panama Canal Zone.

(c) The term "intercoastal" as used herein has reference to all traffic originating at or destined to points on the Pacific Coast of the United States and British Columbia and moving via the Panama Canal.

(d) The term "coastwise" as used herein has reference to all traffic except export, import or intercoastal traffic destined beyond or arriving at Norfolk, Va. by vessel, barge or other means of water transportation and not covered by published through rail and water rates.

(e) (Applicable only on traffic handled via Norfolk & Western Railway or the Virginian Railway). Coastwise traffic as described above arriving at any terminal within Norfolk Harbor direct by vessel, barge, or other means of water transportation and delivered by such carrier to Hampton Roads Terminals, Inc. for storage by switch movement, in lieu of movement by barge, lighter or direct discharge from such water craft, will be considered as having been discharged direct from vessel at the terminal where stored, but when destined to points in Group C (see page 16) there will be no charge nor allowance made to the terminal where stored for wharfage.

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Rule 4

Definition of the Term "Handling"

The term "handling" as used herein, except as otherwise provided, means the legitimate charge for services involved in the physical movement of freight between pier warehouse floor and cars, highway vehicles or harbor and river craft incidental to the interchange of freight between such units of transport and vessels plying in export, import, intercoastal and coastwise services. (See Exceptions (a) and (b) below.)

Exceptions:

(a) No handling charges will be assessed on traffic loaded on, or unloaded from open-top cars placed alongside ships or marginal tracks by ship's tackle or crane direct, and when no handling is performed by or for the account of the Virginian Railway Company.

(b) On Vegetable, Fish, Sea Animal Oils, or other commodities requiring tank cars, transfer of such commodities from ships to tank cars, or from tank cars to ships, must be arranged for by shippers, consignees or owners of the property, and at their expense.

Rule 6

Definition of the Term "Wharfage"

The term "wharfage" as used herein means the use of wharves in the receipt of traffic from or delivery of traffic to ships, barges or other watercraft while lying alongside the wharf properties of the carrier or other wharf properties with which the Virginian Railway has arrangements or contracts, including traffic received from or delivered to barges, lighters or other watercraft lying alongside such vessels or taken from or delivered to the water.

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Rule 31

General Restrictions and Limitations

(b) The Virginian Railway, under this Tariff, except as otherwise specifically provided herein, only provides wharfage, storage or handling for property which has been transported or is intended to be transported to or from the Hampton Roads Terminals, Inc., Norfolk, Va., over its line, in switching or line-haul movement, and as to the property which has been transported, or is intended to be transported over its line, in switching or line-haul movement, has no obligation to provide wharfage, storage or handling services beyond reasonable capacity of the property and facilities. All services undertaken to be performed by this line under this Tariff are further subject to Federal, State and Municipal laws and regulations. Articles of highly inflammable or explosive nature or articles of uncertain value will not, under this Tariff, be provided with wharfage, storage or handling, unless it has been previously ascertained that such articles can be handled. The Virginian Railway does not, under this Tariff, hold out to be public wharfingers, nor does it guarantee berths to vessels. The Virginian Railway assumes no liability for demurrage to vessels. Charges for docking of vessels, will be in addition to the charges provided for in this Tariff, and dockage charges will be assessed and collected by this line in accordance with local port rules.

718

Rule 39—Allowances to Imperial Tobacco Company, Limited (Berkley Warehouses and Tracks) Jones Cold Storage and Terminal Corporation (East Water Street Terminals) or Security Warehouse Corporation, Norfolk, Va. on Shipments Moving in Connection with Virginian Railway.

(a) Except as otherwise provided in paragraph (b), for the use of wharves, warehouses, slips, channels, tracks and approaches and other facilities at Imperial Tobacco Company, Limited (Berkley Warehouses and Tracks), Jones Cold Storage and Terminal Corporation (East Water Street Terminals), or Security Warehouse Corporation, Norfolk, Va., and for other services rendered by the Imperial Tobacco Company, Limited (Berkley Warehouses and Tracks), Jones Cold Storage and Terminal Corporation (East Water Street Terminals) or Security Warehouse Corporation, Norfolk, Va., as Agent for Virginian Railway, the Virginian Railway makes an allowance equal in the amount of charges provided in this Tariff to the Terminal Tobacco Company, Limited (Berkley Warehouses and Tracks), Jones Cold Storage and Terminal Corporation (East Water Street Terminals) or Security Warehouse Corporation, Norfolk, Va., except storage when held in cars which accrues to Virginian Railway.

719

Rule 42—Allowances to *Hampton Roads Terminals, Inc.*

For use of the wharves, warehouses, slips, channels, tracks and approaches and other facilities at the *Hampton Roads Terminals, Inc.*, Norfolk, Va., and for other services rendered by the Hampton Roads Terminals, Inc. as agent for The Virginian Railway Company, The Virginian Railway Company makes an allowance, equal in the amount of charges provided in this Tariff, to the *Hampton Roads Terminals, Inc.*, except on Import and Inbound Coastwise Lumber, Wooden Poles, Wooden Piling and Wooden Ties, carloads, to points in group "B" (see Page 16), the *Hampton Roads Terminals, Inc.* will receive an allowance of 1½ cents per 100 pounds, and on Import and Inbound Coastwise Logs, carloads, to points in Group "B" (see page 16) the *Hampton Roads Terminals, Inc.*, will receive an allowance of 1 cent per 100 pounds, the remainder of the wharfage and handling charge to accrue to the road-haul carrier, except demurrage or storage when held in cars which accrues to The Virginian Railway Company.

(Where underscoring appears changed to Norfolk Terminals, Division of Stevenson & Young, Inc., 1 April 1947)

Rule 42—Cancelled by Sup. 55, September 15, 1948. (In future allowances to terminals will be covered by Contract) (C-6667)

Item No. 1670—Table of Wharfage and Handling Charges (Applicable to or from points designated on Page 16, Subject to Groups indicated)

To and from Points in Group B

Cotton, wharfage and handling, per 100 pounds	2¼ cents
Livestock, wharfage and handling, per 100 pounds	3¾ cents
Lumber and other Forest Products, taking lumber rates, wharfage and handling, per 100 pounds	1¾ cents
Lumber, Palpwood, Logs, Wooden Poles, Wooden Piling (and Wooden Ties, domestic or foreign, carloads, wharfage and handling charges, per 100 pounds (See Note A below)	1 cent
Pig Iron, wharfage and handling, per ton 2,240 pounds	14 cents
All other freight, wharfage and handling, per 100 pounds (See Note A below)	1 cent

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Absorption of Wharfage, Handling and Terminal Charges on Export Import, Intercoastal and Coastwise Traffic

Item No. 1700—At Lambert Point Docks, Inc. (Sewalls Point Division)

Wharfage, handling and terminal charges as published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I. C. C. No. 105, will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through the above terminals:

(a) Export, import, intercoastal and coastwise shipments, regardless of weight, originating at, or destined to points taking Group C and D, except as provided in Notes A and B below.

721

(b) Export carload shipments of Apples originating on the Virginian Railway. Except as otherwise provided above and in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I. C. C. No. 105, will be in addition to the transportation rates on such traffic to or from Norfolk, Va.

Item No. 1710—At Municipal Grain Elevator

Wharfage, handling and terminal charges, as published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I. C. C. No. 105, will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through above terminal:

(a) Export, import, intercoastal and coastwise shipments, in carloads, originating at, or destined to points taking Groups C and D.

Except as otherwise provided above and in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Norfolk and Portsmouth Belt Line Railroad Tariff No. 6-J, I. C. C. No. 105, will be in addition to the transportation rates applicable on such traffic to or from Norfolk, Va. (C-5391).

Item No. 1720—At Imperial Tobacco Company, Limited (Berkley Warehouses and Tracks); Jones Cold Storage and Terminal Corporation (East Water Street Terminals), Security Warehouse Corporation and Hampton Roads Terminals, Inc.

Wharfage, handling and terminal charges, as published in Section No. 1, will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through above terminals:

(a) Export, import, intercoastal and coastwise shipments, regardless of weight originating at, or destined to points taking Groups C and D, except as provided in Notes A and C below.

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(b) Export carload shipments of Apples originating on the Virginian Railway. (RA-130-110).

Except as otherwise provided above and in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Section No. 1, will be in addition to the transportation rates applicable on such traffic to or from Norfolk, Va. (C-2520, C-6669, C-7404).

Item No. 1730—At Lambert Point Docks, Inc. (Lambert Point Division) Merchants Contracting Corporation or Norfolk and Western Railway Lambert Point or Norfolk Terminals (C-9310).

Wharfage and handling charges of not to exceed four (4) cents per hundred pounds on all freight as published in Norfolk and Western Railway Tariff G. F. No. 23-F, I. C. C. No. 9179, will be included in the transportation rates applicable on such traffic to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through above terminals:

(a) Export, import, intercoastal and coastwise shipments, regardless of weight, originating at, or destined to points taking Groups C and D, except as provided in Notes A and D below.

(b) Export carload shipments of Apples originating on the Virginian Railway, (RA-130-110).

Except as otherwise provided above in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Norfolk and Western Railway Tariff G. F. No. 23-F, I. C. C. No. 9179, will be in addition to the transportation rates applicable on such traffic to or from Norfolk, Va. (C-5374).

723

Item No. 1750—At Norfolk Southern Railway Berkley Terminals.

Wharfage and handling charges of not to exceed four (4) cents per hundred pounds, as published in Norfolk Southern Railway Tariff F. T. D. No. 338, I. C. C. No. A-1148, will be included in the transportation rates applicable to or from Norfolk, Va., on the following traffic moving in connection with the Virginian Railway through the above terminals:

(a) Exports, imports, intercoastal and coastwise shipments regardless of weight originating at, or destined to points taking Groups C and D, except as provided in Notes A and F below:

(b) Export carload shipments of Apples originating on the Virginian Railway, (RA-130-110).

Except as otherwise provided above and in tariffs lawfully on file with the Interstate Commerce Commission, the wharfage, handling, storage or other charges published in Norfolk Southern Railway Tariff F. T. D. No. 338, I. C. C. No. A-1148, will be in addition to the transportation rates applicable on such traffic to or from Norfolk, Va. (C-9297).

Note B—The loading charges on Lumber, Logs, Wooden Poles, Wooden Ties and Wooden Piling, published in Note C, Item No. 910, Norfolk and Portsmouth Belt Line Railroad Tariff 6-J, I. C. C. No. 105, will not be included in the transportation rate, but will be in addition.

Note C—The loading charges on Lumber, Logs, Wooden Poles, Wooden Ties and Wooden Piling, published in Note A, Item No. 1680, herein, will not be included in the transportation rate, but will be in addition.

Note D—The loading charges on Lumber, Logs, Wooden Poles, Wooden Ties and Wooden Piling, published in Note A of Section No. 9 to Norfolk and Western Railway Tariff G. F. No. 23-F, I. C. C. No. 9179, will *not* be included in the transportation rate, but will be in addition.

Note E—The loading charges on Lumber, Logs, Wooden Poles, Wooden Ties and Wooden Piling, published in Note A, Item No. 40, Southern Railway Tariff G. F. O. No. 3806, I. C. C. No. A-11065, will *not* be included in the transportation rate, but will be in addition.

Note F—The loading charges on Lumber, Logs, Wooden Poles, Wooden Ties and Wooden Piling, published in Norfolk Southern Railway Tariff F. T. D. No. 338, I. C. C. No. A-1148, will *not* be included in the transportation rate, but will be in addition.

Copy of Agreement dated 1 July 1949 between Norfolk Terminals Division of Stevenson & Young, Inc., a corporation, and Norfolk and Western Railway Company relating to wharfage and handling allowances at Army Base Piers (Hampton Roads Port of Embarkation, in connection with freight passing over those properties.

726 This Agreement made this 1st day of July, in the year of our Lord One Thousand Nine Hundred and Forty-nine (1949) between the Norfolk Terminals, Division of Stevenson & Young, Inc., a corporation organized and existing under the laws of the State of Delaware, party of the first part, hereinafter referred to as the Terminal, and the Norfolk and Western Railway Company, hereinafter referred to as the Carrier, party of the second part;

Whereas, the Terminal operates piers, warehouses and other facilities known as Army Base Terminals, located on the Norfolk and Portsmouth Belt Line Railroad Company in Norfolk, Virginia, and the Carrier owns and operates as a common carrier lines of railroad reaching Norfolk, Virginia and, through switching over the Norfolk and Portsmouth Belt Line Railroad Company, reaches said piers and warehouses, and has provided in its tariffs for the transshipment of export, import, coastwise and intercoastal freight over said properties; and

Whereas, it is mutually desired that a portion of those properties and facilities shall be used for such transshipment of freight and that the Terminal shall, on the terms and conditions hereinafter set forth, perform certain service as an independent contractor for the Carrier in connection with freight passing over those properties:

Now, therefore, This agreement witnesseth:

That in consideration of the premises and of the covenants and agreements on the part of each of the parties hereto to be observed, kept and performed it is hereby mutually covenanted and agreed by and between the parties hereto as follows:

Section 1. Of those properties and facilities known as Army Base Terminal, Norfolk, Virginia, the portions thereof (including the

instrumentalities, equipment and facilities therein or thereon) outlined in red on the map hereto attached and made a part hereof, which said map is numbered 13694-B, in the office of the Chief Engineer, Norfolk and Western Railway Company, Roanoke, Virginia, and is dated December 29, 1948, are hereby designated as properties and facilities to be used by the Terminal in the performance for the Carrier of wharfage, handling and storage services as hereinafter provided, to the extent that such properties and facilities are needed for the prompt and efficient performance of those services, but not exclusively therefor; and the Terminal agrees to keep such properties and facilities in good order and repair and properly equipped for the prompt and efficient performance of those services.

727 *Section 2.* The Terminal, as an independent contractor, agrees to perform for the Carrier, in the areas and with the facilities designated in Section hereof, all wharfage, handling and storage of export, import, coastwise and intercoastal freight interchanged between the Carrier and watercraft over the said piers which the Carrier, under its lawfully published tariffs, is obligated to perform or furnish, including but not limited to (1) receipt of freight from or delivery of freight to watercraft; (2) handling of freight between shipside and piers, between piers and cars, and between shipside and cars; (3) checking freight to and from the designated area; and (4) storage of freight in the designated area.

Section 3. The Terminal shall employ and pay from its own funds such persons as may be needed for the prompt and efficient performance of the services it has agreed to perform, and shall have the sole right to supervise and direct the manner of their work or to discharge them.

Section 4. The Carrier undertakes that it will continue to provide rates to and from the Terminal on the traffic affected hereby the same as are applicable on like traffic to and from other terminals in Norfolk, Virginia, which perform similar services for the Carrier, will absorb switching, wharfage and handling charges to the same extent, and will provide the same storage free time and charges, as on traffic to or from such other terminals.

Section 5. As consideration for the use of the affected area and facilities and for the performance by the Terminal of the services and undertakings hereinabove or hereinafter provided, the Carrier will pay to the Terminal on all freight transshipped over those properties on which the Carrier has had or will have a line-haul beyond the Norfolk, Virginia, switching district or on which it performs a switching service to or from points within that district (but not on freight switched by it to or from connecting Carriers which have a line-haul on such freight beyond such switching district), amounts determined as set forth in the statement

728 attached hereto and marked "Exhibit A." Provided, However, that no payments shall be made by the Carrier to the Terminal (1) in connection with any freight upon which it does not receive a line-haul or switch movement as above described nor (2) in connection with any freight owned by the Terminal or as to which it is shown as consignee or consignor on the bill of lading covering the ra- shipment.

Section 6. The Terminal shall, on or before the 10th day of each calendar month, render to the Carrier bills showing the amount of freight handled by it for the Carrier under this agreement and the compensation due to it under the provisions hereof; and the Terminal shall keep books and records showing those transactions, which books and records shall be available to the Carrier for checking such bills. The Carrier shall pay such bills promptly.

7 Section 7. The Terminal will make no charge against the owners of frei- or any other persons for the storage thereof during the period of free time autho-ized by the duly published tariffs of the Carrier, nor after the expiration of su- free time while the freight is held in the area used for the Carrier. It is the intention of this provision that during the entire period that freight may be held in the area used for the Carrier it shall be held for account of the Carrier and subject to its lawfully published tariffs governing storage of freight at such terminals.

Section 8. For any services which the Terminal may render to the owners of freight while held for account of the Carrier on the premises designated for its use, the Terminal shall make the same charges as are provided for in the lawfully published tariffs of the Carrier for similar services, if charges for such services are so published by the Carrier.

Section 9. The Terminal agrees that it will enforce, on all traffic moving over the area outlined in red on the attached print, and interchanged between highway vehicles, river or canal carriers, on the one hand, and other water craft, on the other hand, the same rules and regulations, and will collect the sa- terminal usage charges as are contemporaneously published by the Carrier for like services on similar traffic. The Terminal shall maintain records of receipts and of dispositions, and shall make sworn statements when required, as to the collec- thereon of charges applicable to the freight transported by highway vehicles and river and canal carriers.

729 Section 10. The Carrier will receive freight from and deliver freight to the Terminal in the same manner and with the same promptness that it receives and delivers like traffic from and to other terminals which perform wharfage, handling and storage services for the Carrier in the City of Norfolk. The Ter-

minal agrees to make every reasonable effort to load and unload cars promptly and to reduce car delay to a minimum.

Section 11. The Carrier will give to the Terminal written disposition instructions on all freight delivered by the Carrier to the Terminal. The Terminal agrees to abide by such instructions and further agrees that any instructions for disposition of such freight which it may receive from the owners thereof or their agents will be submitted to the Carrier and not executed until and unless approved by the Carrier.

Section 12. When freight is unloaded in the portion of the premises of the Terminal used for carrier purposes and subsequently is moved from said portion to another portion of the Terminal's premises, or is moved from such other portion to the portion used for Carrier's purposes, the expense of such handling shall not be borne by the Carrier, except as may be provided for by its published tariffs. On such traffic received from watercraft in the areas used for Carrier's purposes and subsequently loaded to cars outside of such areas for rail movement, and on such traffic unloaded from cars outside the said areas which subsequently passes over such areas and is delivered to watercraft, the Carrier will make the same wharfage and handling allowances as if the wharfage and handling service had been performed in the areas used for Carrier's purposes; and the Carrier reserves the right to police and verify all such operations.

Section 13. The Terminal will promptly notify the Carrier in writing of the failure of any consignee to remove freight and so long as it holds the said freight for account of the Carrier, will observe and comply with all directions with respect to such freight which may be received by it from the Carrier.

Section 14. After the expiration of storage free time on freight handled over the Terminal, as provided in the lawfully published tariffs of the Carrier, the Terminal shall, when requested or
730 authorized by the Carrier, remove such freight from the designated area and receipt to the Carrier therefor, and thereupon the legal possession of the freight on the part of the Carrier shall cease and determine and such legal possession shall then be, and thereafter continue to be, that of the Terminal, which shall hold or dispose of such freight at its own responsibility and in such way as may be lawful, it being intended hereby that such freight so removed from the affected area shall be considered to be in a public or licensed warehouse.

Section 15. The Terminal shall be responsible to the Carrier for any improper delivery of goods entrusted to its possession under the terms of this contract, and shall indemnify the Carrier and save it harmless against any and all loss or damage to freight in the custody or control of the Terminal under the provisions of this

contract, or otherwise, except loss or damage by fire. The Carrier will carry its own insurance against loss or damage by fire and will bear the expense thereof. For the purpose of determining custody as a basis for such responsibility freight delivered by the Carrier to the Terminal shall be considered in the custody of the Terminal when the car containing such freight shall have had its first placement on the tracks serving the Terminal and the Carrier's locomotive uncoupled therefrom, and freight delivered by the Terminal to the Carrier shall be considered in the custody of the Terminal until the car containing such freight shall have been coupled to a locomotive of the Carrier for removal from the Terminal.

Section 16. The Terminal will protect and indemnify the Carrier from and against all manner of liability on account of any act of omission or commission on the part of it, the Terminal, with respect to merchandise handled by the Terminal under this agreement, and also from and against all manner of liability on account of receipts for merchandise issued by it.

731 *Section 17.* The terminal shall fully indemnify and save harmless the Carrier from and against any and all claims and demands whatsoever, actions, suits, costs, recoveries, judgments, or executions, which may be brought, recovered or levied against the Carrier, or which the Carrier may sustain or incur by reason of the negligence of the Terminal.

Section 18. The Terminal shall fully indemnify and save harmless the Carrier from and against any and all loss and damage which the Carrier may sustain or incur as a result of any disregard or violation by the Terminal of the aforesaid matters, or any of them, specified by this agreement.

Section 19. In the performance by the Terminal for the Carrier of the services covered by this agreement, it is understood that the Terminal is to comply strictly with the Carrier's publications and the laws and/or lawful orders of Governmental authorities of competent jurisdiction, and the Terminal shall indemnify the Carrier for all damage or expense it may incur by reason of the Terminal's violation of this understanding.

Section 20. The Terminal agrees not to act as agent for the shipper for the assembling of less-than-carload lots of freight into carload or less-than-carload shipments, or as agent of the consignee for the distribution to more than one consignee of carload or less-than-carload freight in any manner contrary to the tariffs, classifications, rules and regulations of the Carrier.

Section 21. In order to secure the Carrier, the Terminal shall furnish to the Carrier a bond with good and sufficient sureties acceptable to the Carrier in such amount as shall be approved by it, for the performance by the Terminal of all of its covenants in this agreement. The cost of such bond shall be borne by the Carrier.

732 *Section 22.* If any disputed question shall arise between the parties concerning the construction or performance of this agreement, such question shall be submitted to the arbitrement of three disinterested persons to be chosen, one by the Terminal, one by the Carrier, and one by the arbitrators so chosen. If either of said parties shall fail to name an arbitrator within twenty (20) days after written notice to it from the other party setting forth the question or questions at issue, the arbitrator named by the party giving such notice shall name an arbitrator in behalf of the party so in default. If the arbitrators so chosen shall fail to select a third arbitrator within twenty (20) days after the selection of the second arbitrator as aforesaid, the third arbitrator may be appointed, upon twenty (20) days' written notice by either party to the other of its intention to make application therefor, by any Judge of the United States District Court for the District in which the facilities herein described shall then be located. The arbitrators shall promptly hear and decide the question or questions submitted to them, as herein provided, giving each of said parties reasonable notice of the time and place of hearing. The arbitrators shall make their award in writing, serving a copy upon each of said parties. The award of the majority of the arbitrators shall be final and binding upon the said parties. The expense of such arbitration shall be borne by the party against whom the decision of said arbitrators may be rendered, or, if a dividend award be made, in the proportions fixed by the arbitrators.

Section 23. (a) This agreement shall take effect as of the 1st day of July, 1949, and shall continue in full force so long as the Terminal owns or is tenant of the premises designated in this agreement; Provided, however, that should the Terminal in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Carrier, on thirty (30) days' written notice to the Terminal, cease and determine and become absolutely void.

(b) This agreement is, however, subject to such different termination, revision or annulment as may be necessary to comply with any law, order or decision of Governmental authorities of competent jurisdiction which may now be in effect or which may hereafter be enacted or rendered affecting the services hereunder.

(c) It is distinctly understood and agreed by and between the parties hereto that either party shall have the right to terminate this agreement at any time hereafter upon giving to the other party ninety (90) days' written notice of its intention so to do, notwithstanding the express provision herein set forth that this agreement shall continue in force so long as the Terminal is the owner or tenant of the premises designated in this agreement.

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Section 24. Upon termination of this agreement, the Terminal

shall reimburse the Carrier for any extra expense to which the Carrier may be subjected by reason of the necessity for removing from the Terminal freight which may be held in the Terminal, or be in transit thereto, at the time of such termination.

Section 25. No assignments of this agreement, whether voluntary or involuntary, shall be valid without the consent of the Carrier, and upon the happening of any legal proceedings, the effect of which shall be to divest the title or possession of the Terminal, this agreement shall, at the option of the Carrier cease and determine.

Section 26. Any and all previous agreements or contracts between the parties hereto which relate to the performance by the Terminal for the Carrier of wharfage, handling or storage services in or upon the designated premises, are hereby cancelled by mutual agreement.

In Witness Whereof the said parties hereto have hereunto affixed their respective seals, duly attested, the day and year first hereinabove written.

Signed, Sealed and Delivered in the presence of:

NORFOLK TERMINALS,

Division of

STEVENSON & YOUNG, INC.

By _____,

President.

Attest: _____,

Secretary.

NORFOLK AND WESTERN RAILWAY COMPANY,

By _____,

Vice President and General Manager,

Attest: _____,

Secretary.

Exhibit A—Effective July 1, 1949

On export, import, intercoastal, coastwise traffic (except grain, in bulk, and freight in tank cars) originating at or destined to territory listed on Pages 13 and 26 of Norfolk and Western Railway Tariff GF-23-F, ICC-9179, supplements thereto or reissues thereof, the Carrier will pay the Terminal for wharfage and/or handling the charges published in above referred to tariff, or the amounts specifically shown, as indicated below:

Territory, as defined in above tariff, Carrier will pay Terminal

1. Points in Norfolk, Va. switching dis.—subject to Section 7; Charges provided in Section 7.

2. Points in so-called "Southern Territory" subject to Section 4—

(a) All traffic except as hereinafter indicated, Charges provided in Section 4.

(b) Books, CL, from Kingsport, Tenn. for coastwise movement to Texas (RA-42-310), (28¢ per ton 2000 lbs wharfage), also (69¢ per ton 2000 lbs. handling).

(c) Cigarettes and manufactured tobacco, CL, from Durham, Reidsville, Winston-Salem and South Winston-Salem (RA-309-210), (28¢ per ton 2000 lbs. wharfage,) also (69¢ per ton 2000 lbs. handling).

(d) Lumber, sawn or hewn timber (other than pine), also veneer in packages, in box cars, CL, from stations on CNO&TP Ry, between Winchester, Ky. and Harriman, Tenn. and short line connections, also L&N RR east of Anchorage, Ky. via Winchester and Corbin to Norton, including all stub branches (RA-176-310), (28¢ per ton 2000 lbs. wharfage, also (50¢ per ton 2000 lbs. handling).

3. Points in so-called "Official non-absorption Territory" subject to Section 2, (2¢ per 100 lbs. wharfage and handling when to or from stations Suffolk, Va. and east; 2½¢ per 100 lbs. wharfage and handling when to and from other stations.

4. Points (other than covered by Territories 1, 2 and 3 above) subject to Section 1—

(a) All traffic except as indicated in (b) to (f):

When handled in open top cars placed on marginal tracks alongside vessel and loading-unloading is performed by vessel, 1¼¢ per 100 lbs wharfage.

Except when handled in open top cars placed on marginal tracks alongside vessel and loading-unloading is performed by vessel, 1¼¢ per 100 lbs. wharfage, also (3¾¢ per 100 lbs. or 75¢ per ton net or gross as rated, (handling).

(b) Fertilizer materials, CL, imported, Richmond, Va. (RA-114-111), (62½¢ per ton 2000 lbs. wharfage (and handling).

735 (c) Lumber and other forest products, in open cars, CL, ex-water, when stowing in or on cars is required for safe carriage and performed; (2¢ per 100 lbs. in addition to payment for wharfage).

(d) Sugar, CL, imported or intercoastal, to Richmond, Va. (RA-288-111), (1¼¢ per 100 lbs. wharfage, also) (2½¢ per 100 lbs. handling).

(e) Sulphur (brimstone), CL, imported, Coastwise or intercoastal to Bellwood, Va. (RA-114-111):

When in open top cars, 25¢ per ton 2000 lbs. wharfage.

When in closed cars, (31¢ per ton 2000 lbs. wharfage) (and handling).

(f) Tobacco, leaf, any quantity, from Richmond, Va. for export (when moving under rates not subject to storage-in-transit

privileges) (RA-308-110), (1¼¢ per 100 lbs. wharfage, also 1½¢ per 100 lbs. handling.

Note—Payments by the Carrier for all of the above services shall be on basis of actual weight handled by the Terminal, except that on less than carload shipments the minimum wharfage and/or handling charges as published in above mentioned tariff will be paid the Terminal.

In addition to the above when the special services hereinafter mentioned are performed by the Terminal for account of the Carrier, the Carrier will also pay the Terminal the figures indicated below:

For miscellaneous services such as blocking, staking, or otherwise making secure in or on cars, marking, tagging, split deliveries, etc. of freight for which charges are provided in the above mentioned tariff, when performed.....Charges published in tariff.

For cleaning and conditioning cars, including removal of nails, nail-heads, etc., when required.....\$0.75 per car.

For furnishing paper and papering cars to be loaded with chine clay, woodpulp, newsprint paper and similar commodities requiring such protection 1.00 per car.

For boarding doors of box cars to be loaded with bulk commodities.....3.00 per car.

For weighing cars, empty or loaded, when called upon..... 2.00 per car.

For storage of freight on the piers in the area used for the Carrier, the Carrier will pay to the Terminal the amount of storage charges which accrues therefor under the Carrier's lawfully published tariffs; but storage charges accruing on freight while held in cars at the Terminal shall accrue to the Carrier and nothing shall be paid therefor to the Terminal.

(Here follows 3 Photolithographs, Exhibit 10, fols. 736, 737. Exhibit 12, fols. 738-739)

STATEMENT OF CLASS RATES AND DISTANCES BETWEEN 106 BASE POINTS-RESULTING
FROM I.C.C. DOCKET 13679 EASTERN CLASS RATE CASE AND THE PORTS OF
NEW YORK, PHILADELPHIA, BALTIMORE, ALBANY, NORFOLK AND BOSTON
RATES IN CENTS PER 100 POUNDS

LINE	AND	BETWEEN	Miles	BALTIMORE, MD.		Miles	NORFOLK, VA.		Miles	NEW YORK, N.Y.		Miles	PHILADELPHIA, PA.		Miles	ALBANY, N.Y.		Miles	BOSTON, MASS.	
				CLASSES			CLASSES			CLASSES			CLASSES			CLASSES			CLASSES	
				1	6		1	6		1	6		1	6		1	6		1	6
1	Akron	Ohio	429			621			550			475			499			683		
2	Domestic			200	56		242	66		229	63		211	57		215	58		249	68
3	Import, Intercoastal, Coastwise			200	56		223	62		208	59		202	57		202	57		208	59
4	Export, Intercoastal, Coastwise			200	56		223	62		203	59		201	57		201	57		203	59
5	Alpena	Mich.	793			991			789			751			677			861		
6	Domestic			297	83		334	91		297	83		297	83		272	76		300	83
7	Import, Intercoastal, Coastwise			289	80		289	80		297	83		291	81		272	76		297	83
8	Export, Intercoastal, Coastwise			294	80		294	80		297	83		295	81		272	76		297	83
9	Ann Arbor	Mich.	593			785			668			640			559			743		
10	Domestic			238	66		281	77		254	78		248	68		233	65		263	72
11	Import, Intercoastal, Coastwise			238	65		238	65		246	69		240	66		233	65		246	68
12	Export, Intercoastal, Coastwise			238	66		238	66		241	69		239	67		233	65		241	69
13	Ashtabula	Ohio	429			628			513			450			414			598		
14	Domestic			200	56		242	66		219	62		200	56		195	54		230	63
15	Import, Intercoastal, Coastwise			198	55		242	66		206	58		200	56		195	54		206	58
16	Export, Intercoastal, Coastwise			199	55		242	66		202	58		200	56		195	54		202	58
17	Aurora	Ill.	800			941			934			747			825			1009		
18	Domestic			283	77		306	85		306	85		294	80		279	77		309	86
19	Import, Intercoastal, Coastwise			283	77		283	77		291	80		285	78		279	77		291	80
20	Export, Intercoastal, Coastwise			283	77		283	77		286	80		284	78		279	77		286	80
21	Big Rapids	Mich.	761			953			771			777			659			843		
22	Domestic			277	77		315	86		283	77		283	77		257	72		290	80
23	Import, Intercoastal, Coastwise			275	74		275	74		283	77		277	75		257	72		283	77
24	Export, Intercoastal, Coastwise			277	74		277	74		280	77		278	75		257	72		280	77
25	Bloomington	Ill.	815			931			957			881			872			1056		
26	Domestic			283	77		301	83		311	86		297	83		292	80		320	87
27	Import, Intercoastal, Coastwise			283	77		283	77		291	80		285	78		285	78		291	80
28	Export, Intercoastal, Coastwise			283	77		283	77		286	80		284	78		284	78		286	80
29	Bloomington	Ind.	699			799			848			772			804			988		
30	Domestic			262	72		281	77		290	80		277	77		273	76		301	83
31	Import, Intercoastal, Coastwise			262	72		262	72		270	75		264	73		264	73		270	75
32	Export, Intercoastal, Coastwise			262	72		262	72		265	75		263	73		263	73		265	75
33	Burlington	Iowa	942			1061			1074			998			985			1119		
34	Domestic			311	86		329	91		337	94		322	90		316	87		348	95
35	Import, Intercoastal, Coastwise			311	86		311	86		319	89		313	87		313	87		319	89
36	Export, Intercoastal, Coastwise			311	86		311	86		314	89		312	87		312	87		314	89
37	Cadillac	Mich.	775			967			781			787			668			852		
38	Domestic			287	79		322	90		287	79		287	79		262	72		292	80
39	Import, Intercoastal, Coastwise			279	76		279	76		287	79		281	77		262	72		287	79
40	Export, Intercoastal, Coastwise			284	76		284	76		287	79		285	77		262	72		287	79
41	Cairo	Ill.	907			955			1071			991			1026			1210		
42	Domestic			308	85		319	87		338	94		326	90		326	90		354	97
43	Import, Intercoastal, Coastwise			308	85		308	85		316	88		310	86		310	86		316	88
44	Export, Intercoastal, Coastwise			308	85		308	85		311	88		309	86		309	86		311	88
Totals				7,943		9,632			8,956			8,269			7,988			9,962		
Domestic					2,946		3,272	899		3,151	873		3,042	840		2,920	807		3,256	894
Import					2,926		2,993	820		3,014	836		2,948	814		2,872	797		3,014	836
Export					2,939		3,005	821		2,972	837		2,950	815		2,867	797		2,972	837

Exhibit 10

SUMMARY

LINE		Miles	BALTIMORE, MD.		Miles	NORFOLK, VA.		Miles	NEW YORK, N.Y.		Miles	PHILADELPHIA, PA.		Miles	ALBANY, N.Y.		Miles	BOSTON, MASS.	
			CLASSES			CLASSES			CLASSES			CLASSES			CLASSES			CLASSES	
			1	6		1	6		1	6		1	6		1	6		1	6
1	Grand Total Miles	73229			88356			85146			78805			78085			97662		
2	Grand Total Domestic Rates.		27434	7573		30424	8371		29945	8266		28703	7917		28142	7775		31345	8628
3	Grand Total Import Rates.		27321	7506		27704	7608		28176	7841		27536	7626		27083	7514		28176	7841
4	Grand Total Export Rates.		27400	7522		27761	7618		27734	7841		27510	7627		27013	7514		27734	7841
5	Grand Total 1st & 6th Domestic Rates		35007			38795			38211			36620			35917			39973	
6	Grand Total 1st & 6th Import Rates		34827			35312			36017			35162			34597			36017	
7	Grand Total 1st & 6th Export Rates		34922			35379			35575			35137			34527			35575	
8	Average Miles	690.8			833.5			803.3			743.4			736.7			921.3		
9	Average Domestic Rates.		258.8	71.4		287.0	79.0		282.5	78.1		270.8	74.7		265.5	73.3		295.7	81.4
10	Average Import Rates.		257.7	70.8		261.4	71.8		265.8	74.0		259.8	71.9		255.5	70.9		265.8	74.0
11	Average Export Rates.		258.5	71.0		261.9	71.9		261.6	74.0		259.5	72.0		254.8	70.9		261.6	74.0
12	Percent of Import.		99.6	99.1		91.1	90.9		94.1	94.9		95.9	96.3		96.2	96.6		89.9	90.9
13	Domestic Rates Export.		99.9	99.3		91.2	91.0		92.6	94.9		95.8	96.3		96.0	96.6		88.5	90.9
14	Percent 1st & 6th Import		99.5			91.0			94.3			96.0			96.3			90.1	
15	Grand Total is of Grand Total Domestic Export		99.8			91.2			93.1			96.0			96.1			89.0	

TARIFF AUTHORITIES

C.W. Boin's	I.C.C. No. A-694
"	I.C.C. No. A-744
"	I.C.C. No. A-755
"	I.C.C. No. A-766
"	I.C.C. No. A-819
"	I.C.C. No. A-942
I.N. Doe's	I.C.C. No. 362
L.C. Schuldt's	I.C.C. No. 3642

Line

DEFINITION (EXPORT FREIGHT)Line
No.DEFINITION OF TERM EXPORT TRAFFIC

For account of the
Baltimore & Ohio R.R.
Pennsylvania R.R.
Pennsylvania-Reading Seashore Lines
Reading Co.
Western Maryland Railway

Except as otherwise provided herein, the rules shown in this tariff and as amended covering export freight, will apply on property for export to all destinations not located in -

The Continental United States of America (including Alaska),
Dominion of Canada,
Islands of Miquelon and St. Pierre (see Note),
Newfoundland (see Note),

when exported direct from port stations named in this tariff or as amended, and will only apply except as otherwise provided herein, on traffic which does not leave possession of the carrier, and is delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port or after storage or transit has been accorded by the carriers under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply, which traffic is handled direct from carrier's stations to steamship docks and on which required proof of exportation is given.

NOTE: - Export rules shall apply to these points to the extent they are presently provided for on specific commodities as provided in the Agency and individual lines' tariffs applicable thereto.

This portion of Rule not applicable for account of Western Maryland Ry. at Baltimore, Md. or for Pennsylvania R.R. at Chester, Pa.

This portion of Rule not applicable for account of Reading Co.

EXCEPTIONSAT BALTIMORE, MD.:

For Account of the Pennsylvania R.R.:

The rules shown in this tariff and as amended covering export freight will apply only on shipments delivered to vessels directly from railroad owned piers or piers leased to and operated by the railroad company at Baltimore, Md., except as otherwise authorized in tariffs on file with the Interstate Commerce Commission in connection with separate deliveries of export shipments.

For Account of the Western Maryland Ry.:

Rates, Charges, rules and regulations on export property will apply only on shipments delivered to vessels directly from railroad-owned piers or piers leased to, and operated by the railroad company at Baltimore, Md., except as otherwise authorized under "Split Deliveries on Export Carload Freight" in connection with split deliveries of export shipments.

AT CHESTER, PA.:

For Account of Pennsylvania R.R.:

Rates, charges, rules and regulations on export property will apply only on shipments delivered to vessels directly from piers of the Ford Motor Company and Chester Tidewater Terminal, Inc.

AT PHILADELPHIA, PA. - CAMDEN, N.J.:

For Account of Pennsylvania R.R. and Pennsylvania-Reading Seashore Lines:
Except as otherwise authorized in tariffs lawfully on file with the Interstate Commerce Commission in connection with split deliveries on export shipments, the rules shown herein, covering export freight will also apply on shipments delivered to vessels directly from public piers operated by steamship companies, City of Philadelphia, Pa., City of Camden, N.J. or individual (excepting piers controlled by owners of the traffic) at Philadelphia, Pa. or Camden, N.J.

AT TRENTON, N.J.:

For Account of Pennsylvania R.R.:

The rules shown in this tariff covering export freight will apply only on shipments delivered to vessels directly from the Trenton Marine Terminal, Trenton, N.J.

AT WILMINGTON, DEL.:

For Account of Pennsylvania R.R.:

The rules shown in this tariff and as amended, covering export freight will apply only on shipments delivered to vessels directly from railroad owned or leased piers and other public piers operated by steamship companies, pier companies, City of Wilmington, Del., or individuals (except piers controlled by owners of the traffic).

TARIFF AUTHORITIES

Baltimore & Ohio R.R. I.C.C. Nos. 23852, 23971 and 23972.
Pennsylvania R.R. I.C.C. Nos. 2970, 2971, 3007, 3102, 3103 and 3106.
Reading Co. I.C.C. No. 2205
Western Maryland Ry. I.C.C. No. 8922

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EXHIBIT 21

Statement Showing Industries Using Privately Owned or Privately Operated Facilities Located within The New York Harbor Area, Having Both a Railroad Siding and a Deepwater Pier, where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

Item	Industry	Industry
1	American Mineral Spirits	Mexican Petroleum Corp.
2	American President Lines	New York Lubricating Oil Co.
3	Archer Daniels Midland Co.	New York Oil Co. Inc.
4	Bayway Terminal Corporation	Phelps-Dodge Copper Products
5	Berry, Jos. B., Sons Co.	Shell Oil Co.
6	Borne Scrymser Co.	Ships & Power Equipment Co.
7	Bryton Co.	Smith, Werner G., Co.
8	California Oil Co.	Socony Vacuum Oil Co.
9	California Refining Co.	Stanco Inc.
10	Coastal Oil Co.	Standard Alcohol Co.
11	Coe, Jas. A., Co.	Texas Co.
12	Colonial Beacon Oil Co.	Tide Water Associated Oil Co.
13	Constable Hook Shipyard	U. S. Airforce
14	Crown Central Petroleum Co.	U. S. Metals Refining Co.
15	Esso Standard Oil Co.	United States Navy
16	Federal Salvage Corp.	U. S. Navy Supply Base & Drydock
17	General American Tank Storage Terminals	Warner Chemical Division of Westvaco Chlorine Prod. Corp.
18	Gulf Oil Corp.	Warren Petroleum Co.
19	Hess Inc.	Weyerhoeuser Timber Co.
20	Metal & Thermit Corp.	Williams & Son, I. T.

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Statement Showing Industries Using Privately Owned or Privately Operated Facilities, Located within the Various Port Terminal Areas Listed Below, Having Both a Railroad Siding and a Deepwater Pier, Where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

Item	Industries	Location
1	American Cyanamid Co.	Gloucester, N. J.
2	Armstrong Cork Company	Gloucester, N. J.
3	Baldwin Locomotive Works	Eddystone, Penn.
4	DuPont De Nemours, E. I. & Company	Carney's Point, N. J.
5	Eagle Point Refinery-Texas Company	Eagle Point, N. J.
6	General Chemical Company	North Claymont, Del.
7	Harshaw Chemical Co.	Gloucester, N. J.
8	Ruberoid Co.	Gloucester, N. J.
9	Socony-Vacuum Oil Company	Paulsboro, N. J.
10	Texas Company	North Claymont, Del.
11	Thomas, I. P. Company	Paulsboro, N. J.
12	U. S. Coast Guard	Gloucester, N. J.

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Statement Showing Industries Using Privately Owned or Privately Operated Facilities Located within the Philadelphia, Pa., and Camden, N. J. (as shown below) Port Terminal Area, Having Both a Railroad Siding and a Deepwater Pier, Where Carload Freight May be Interchanged between Railroad Cars and Vessels.

Item	Industry	Industry
1	American Oil Company	Northern Metals Company
2	Armstrong Cork Co. (Camden, N. J.)	Ontario Land Company
3	Ashenfelter, W. C. & Sons	Patterson, J. M. & Company
4	Atlantic Refining Company	Pennsylvania Life Insurance
5	Atlantic Terminal Warehouse Co.	(Formerly Hanson's Lumber Yard)
6	Barrett Company	Penna Salt Manufacturing Company
7	Baugh & Sons	Penna Sugar Company
8	Bisbee Linseed Company	Petrol Corporation
9	Bull Line	Philadelphia Coke Company
10	Campbell Soup Co. (Camden, N. J.)	Philadelphia Electric Company
11	Cities Service Oil Company (Petty's Island, N. J.)	Philadelphia Gas Works
12	City Asphalt Wharf	Philadelphia Transportation Company
13	Cramp Shipyard (U. S. Navy)	Public Service Corp. (Camden Coke Plant) (Camden, N. J.)
14	Dugan & McNamara	Publicker Industries Inc.
15	DuPont De Nemours, E. I. & Company	Quigley Shipyards Inc. (Camden, N. J.)
16	Franklin Sugar Refining Company	RCA Manufacturing Co. (Camden, N. J.)
17	Gulf Oil Corporation	R.T.C. Shipbuilding Corp. (Camden, N. J.)
18	Independent Pier Company	Scull, Wm. S., Co. (Camden, N. J.)
19	Kieckhefer Container Company (Delair, N. J.)	Shell Oil Company
20	Liberty Corporation	Shoemaker, M. L.
21	Mack Warehouse Co.	Southwark Mfg. Co. (Camden, N. J.)
22	Mathis, John H. & Co. (Camden, N. J.)	Terminal Warehouse Company
23	McAndrews & Forbes Co. (Camden, N. J.)	Tidewater Oil Sales Company
24	Merchant's Warehouse Company	Union Paving Company
25	Motor Real Estate Company (Phila. Trans. Company)	U. S. Gypsum Company
26	National Sugar Refining Co.	United States Navy (League Island)
27	New York Shipbuilding Co. (Camden, N. J.)	Warner Company
		Watson, Malone & Sons

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Statement Showing Industries Using Privately Owned or Privately Operated Facilities, Located within the Chester-Marcus Hook, Pa., Port Terminal Area, Having Both a Railroad Siding and a Deepwater Pier, where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

Item	Industry	Location
1	Chester Blast Furnace Inc.	Chester, Pa.
2	Philadelphia Electric Company	Chester, Pa.
3	Scott Paper Company	Chester, Pa.
4	Sun Shipbuilding & Drydock Company	Chester, Pa.
5	Sinclair Refining Company	Marcus Hook, Pa.
6	Sun Oil Company	Marcus Hook, Pa.

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Statement Showing Industries Using Privately Owned or Privately Operated Facilities, Located within the Baltimore, Md., Port Terminal Area, Having Both a Railroad Siding and a Deepwater Pier, where Carload Freight May be Interchanged Between Railroad Cars and Vessels.

Item	Industries	Industries
1	American Agricultural Chemical Co.	J. S. Young Co.
2	American Oil Co.	Maryland Dry Dock Co.
3	American Sugar Refining Co.	Menhaden Fish Products Co.
4	Arundel Corporation	Municipal Pier No. 2, Pratt Street
5	Atlantic Terminals Inc.	Municipal Pier No. 4, Pratt Street
6	Baltimore Fidelity Warehouse Co. Canton Warehouse	National Gypsum Co.
7	Baugh Chemical Co.	Nelson Corp.
8	Belts Wharf Warehouse Inc.	Petrol Terminal Corporation
9	Bethlehem Steel Co. (Ship-Building Div.)	Procter & Gamble Mfg. Co.
10	Bradley & Baker Co.	Rukert Terminal Corporation
11	Central Oil Emulsion Corp. of Delaware	Sinclair Refining Co.
12	Co-Operative Mills Inc.	Standard Oil Co.
13	Consolidated Gas Electric Light and Power Co.	Sugar House Pier (Leased to Boston Iron and Metal Co.)
14	Continental Can Co.	Terminal Warehouse Co., Bond Street Pier
15	Davidson Chemical Co.	Tidewater Associated Oil Co.
16	F. Bowie Smith	United States Army (Hawkins Point Pier)
17	Fertilizer Mfg. Co-Operative, Inc.	Western Electric Co. Inc.
18	F. S. Royster Guano Co.	Weyerhaeuser Timber Co.
19	General Chemical Co.	

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EXHIBIT 29

AGREEMENT COVERING SERVICES THE NORFOLK TERMINAL DIVISION OF STEVENSON AND YOUNG, INC., PERFORMED FOR THE P.R.R.

This Agreement made this 5th day of April in the year of our Lord One Thousand Nine Hundred and Forty-Seven (A.D. 1947) between Norfolk Terminals Division of Stevenson & Young, Inc., a corporation of the State of Delaware, hereinafter referred to as the "Terminal", party of the first part, and The Pennsylvania Railroad Company, hereinafter referred to as the "Railroad", party of the second part.

Witnesseth:

Whereas, the Terminal has undertaken to operate wharf properties and facilities, hereinafter referred to as "facilities", known as the Army Base at Norfolk, Virginia, in the capacity of a public wharfinger for the transshipment of freight between rail and vessel,

And whereas, the Terminal is willing and desirous of permitting the use of said facilities by the Railroad for the transshipment of export, import, coastwise and interoastal freight pursuant to its published tariff rules and charges,

And whereas, the Terminal is willing to act as agent for the Railroad in loading and unloading freight to and from cars and otherwise to perform the obligations of the Railroad with respect to freight passing over the said facilities pursuant to its published tariffs and as directed by the Railroad,

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereto to be observed, kept and performed, it is hereby mutually covenanted, 746 stipulated, and agreed by and between the parties hereto as follows:

1. The terminal agrees to act as agent for the Railroad in handling export, import, coastwise and interoastal freight transshipped over the said facilities in connection with rail transportation by the Railroad, to load and unload cars, to provide storage, and otherwise to perform the duties and obligations of the Railroad with respect to such freight as set forth in its published tariffs.

2. As compensation for the use of the facilities and for services performed in its behalf, the Railroad agrees to pay the Terminal the amounts specified in its published tariffs, applied to the actual weight of shipments handled.

3. The aforesaid payments to the Terminal shall be made only with respect to traffic as to which the Railroad provides in its tariffs for the inclusion of wharfage and handling charges in the line-haul rates to or from Norfolk, Va., and shall not include any freight consigned to or from the Terminal on its own account, or in which it has an interest.

4. The Terminal shall provide adequate facilities for the handling and storage of the freight subject to this agreement, shall provide access to the Railroad or its agent, the Norfolk and Portsmouth Belt Line Railroad, for the delivery of cars to and from shipside without interference or interruption, and shall load and unload cars promptly without delay of freight or railroad equipment.

5. The Terminal shall be responsible to the Railroad for the collection of freight charges and any charges lawfully assessed against the freight transported, as directed by the Railroad, and

shall comply with the laws affecting the collection of charges
747 by common carriers, and shall pay over to the Railroad all charges collected for its account in accordance with its rules and regulations.

6. When acting as agent for the Railroad, the Terminal shall make the same charges for storage and other services as are contemporaneously published by the Railroad in its tariffs, including the same allowance of free time. Storage charges shall accrue to the Terminal except charges for storage in cars which shall accrue to the Railroad.

7. The Terminal shall be responsible to the Railroad for any freight in its custody under this agreement, and shall indemnify the Railroad and save it harmless from all claims for loss or damage while the freight is in the custody of the Terminal. As between the Terminal and the Railroad, custody of freight delivered by the Railroad shall be in the Terminal when cars have had their first placement on hold or unloading tracks within the Army Base, and custody of freight delivered to the Railroad shall be in the Terminal until cars have been attached to locomotives for removal from the Army Base.

8. The terminal shall fully indemnify and save harmless the Railroad from and against any and all claims and demands whatsoever, actions, suits, costs, recoveries, judgements, or executions, which may be made, brought, recovered, or levied against the Railroad, or which it may sustain or incur by reason of the negligence of the Terminal.

9. The Terminal shall fully indemnify and save harmless the Railroad from and against any and all loss, claims, damages, or penalties which it may sustain or incur as a result of any disregard or violation by the Terminal of any of the matters,
748 terms, or conditions of this agreement.

10. Upon the demand of the Railroad, and at its cost, the Terminal shall furnish it a bond with good and sufficient surety acceptable to the Railroad, and in such amount as shall be approved by it, conditioned for the prompt payment of freight and other charges, and the performance by the Terminal of all its other covenants contained in this agreement.

11. The Terminal shall not discriminate against the Railroad in favor of any other common carrier in the matter of service or in any other manner, and shall not disclose or give to any person or corporation any information with respect to the traffic of the Railroad.

12. If any disputed question shall arise between the parties concerning the construction or performance of this agreement, such question shall be submitted to the arbitration of a disinterested person mutually acceptable to both parties, or in the absence of agreement, to three disinterested persons to be chosen one by the

Terminal, one by the Railroad and one by the arbitrators so selected. If either of said parties shall fail to name an arbitrator within twenty days after written notice to it from the other party, setting forth the question or questions at issue, the arbitrator named by the party giving such notice shall name an arbitrator in behalf of the party so in default. If the arbitrators so chosen shall fail to select a third arbitrator within twenty days after the selection of the second arbitrator as aforesaid, the third arbitrator may be appointed upon twenty days written notice by either party to the other of its intention to make application therefor, by any judge of

749 the United States District Court for the Eastern District of Virginia. The arbitrator or arbitrators shall promptly hear and decide the question submitted, giving each of said parties reasonable notice of the time and place of hearing. The award shall be made in writing with service upon each of said parties. The award of the arbitrator, or the majority of the arbitrators, shall be final and binding upon the parties, and the expense of arbitration shall be borne by the party against whom the decision is rendered, or in the case of a divided award, in the proportions fixed by the arbitrators.

13. This agreement shall terminate absolutely and immediately whenever the Terminal ceases to operate the said facilities as a public wharfinger for the handling of freight, and in any event shall be terminable by either party on thirty days notice in writing.

In witness whereof, the said parties have hereunto affixed their respective seals, duly attested the day and year first hereinabove written.

NORFOLK TERMINALS DIVISION OF
STEVENSON & YOUNG, INC.

By H. D. STEVENSON, *President.*

THE PENNSYLVANIA RAILROAD COMPANY,

By W. S. FRANKLIN, *Vice President.*

Attest: JOHN L. YOUNG,
Secretary.

Attest: J. TANEY WILCOX,
Secretary.

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EXHIBIT 30

Statement of Excerpts from Penna. R.R. Tariff ICC 3007, Setting Forth the Regulations and the Compensation Which the Penna. R.R. Will Pay to the Norfolk Terminals Division of Stevenson & Young, Inc., for Wharfage Facilities Furnished and Handling Services Performed at Norfolk, Va.

Line No.	Item	Subject	Rule 47	
1		Wharfage and	Except as indicated in Items 375, 380 and 385 and unless otherwise provided in this tariff or in other tariffs lawfully on file with the Interstate Commerce Commission, wharfage and handling charges published in Norfolk and Portsmouth Belt Line Railroad Company Tariff No. 6-J, I.C.C. 105, will be included in the freight rate to or from Norfolk, Va., on Export, Import, Intercoastal and Coastwise freight traffic, any quantity, other than traffic moving on joint through rates via regular coastwise lines operating to and from North Atlantic Ports, subject to the following conditions: (a) When the freight rate from Norfolk, Va., on inbound traffic or to Norfolk, Va., on outbound traffic is 19 cents per 100 pounds (Rule 53) or higher. (b) When receipt from or delivery to vessel is in rail service over wharf properties owned or leased by Norfolk Terminals Division of Stevenson & Young, Inc., and operated by Norfolk Terminals Division of Stevenson & Young, Inc., as a public terminal facility of the rail carriers. (c) When Norfolk Terminals Division of Stevenson & Young, Inc., acting in the capacity of a public wharfinger, furnishes wharfage facilities and performs handling services for account of and as agent for the rail carriers on traffic that is neither consigned to or from nor owned or controlled by Norfolk Terminals Division of Stevenson & Young, Inc.	
2		Handling		
3		Charges		
4				
5				
6				
7				
8				
9				
10				
11				
12				
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31				
		Norfolk	Compensation The Pennsylvania Railroad Company will pay to Norfolk Terminals Division of Stevenson & Young, Inc., as its agent, for wharfage facilities furnished and handling services performed on traffic described and conforming to the conditions specified above, compensation in the following amounts in cents per 100 pounds, except as otherwise provided.	
32	305	Terminals		
33		Division of		
34		Stevenson &		
35		Young, Inc.		
36				
37				
38				
			Wharfage	Handling
39		Freight in open top		
40		cars, except as		
41		otherwise indicated	1 1/4
42		Freight in tank cars	1 1/4
43		Grain in bulk	1 1/4
44		Import and inbound		
45		Coastwise Lumber and		
46		other Forest Products		
47		taking Lumber rates		
48		and Pulpwood when		
49		stowing in open top		
50		cars is required	1 1/4	2
51		All other freight	1 1/4	3 3/4 or 75 cents per ton

EXHIBIT 30—Continued

751	Line	No. Item	Subject	Rule 47
	52			(1) (a) Handling Charges will not be absorbed on
	53			freight in open cars, except on lumber, all kinds
	54			(including wooden logs, wooden poles, wooden ties
	55			and wooden piling), carloads (see paragraph (b)).
	56			(b) When stowing in open cars is required,
	57			handling charge of $\frac{1}{2}$ cent per 100 pounds or 10
	58	375		cents per 2000 pounds will be absorbed on lumber,
	59			all kinds (including wooden logs, wooden poles,
	60			wooden ties and wooden piling), carloads, loaded
	61			on open cars at the Lamberts Point Terminals (Nor-
	62			folk & Western Railway Company Piers), Lamberts
	63			Point Docks, Inc.
	64			(2) (a) Wharfage and/or handling charges will
	65			not be absorbed on freight accorded lighterage, or
	66			on Grain or any other inbound or outbound traffic
	67			milled, mixed, malted or stored in transit at the
	68			wharf properties operated by Norfolk Terminals
	69			Division of Stevenson & Young, Inc., Lambert's
	70			Point Docks, Inc.; Lincoln Tidewater Terminals,
	71		Absorption	Inc.; Merchants' Contracting Corporation; H. B.
	72		of Wharfage	Rogers, Inc. (Norfolk Division Terminals); Secu-
	73	380	and	rity Warehouse Corporation; Imperial Tobacco Com-
	74		Handling	pany, Ltd. (Berkley Warehouse and Tracks); Norfolk
	75		Charges	Southern Railroad Company, Berkley Terminals; Jones
				Cold Storage and Terminal Corp. (East Water Street
	77			Terminals); Lamberts Point Terminals (Norfolk &
	78			Western Railway Company Piers), Norfolk, Va.; H. B.
	79			Rogers, Inc. (Portsmouth Division Terminals); Pier
	80			No. 1, Pinners Point Terminal, Portsmouth, Va.,
	81			Norfolk Tidewater Terminals, Inc., Pinners Point
	82			(Portsmouth), Va.
	83			(b) In all other respects on Export, Import,
	84			Intercoastal and Coastwise traffic, the wharfage,
	85			handling, storage and/or other charges applicable
	86			at the wharf properties operated by Norfolk Termi-
	87			nals Division of Stevenson & Young, Inc.; Lambert's
	88			Point Docks, Inc.; Lincoln Tidewater Terminals,
	89			Inc.; Merchants' Contracting Corporation; H. B.
	90			Rogers, Inc. (Norfolk Division Terminals);
	91			Security Warehouse Corporation; Imperial Tobacco
	92			Company, Ltd. (Berkley Warehouses and Tracks);
	93	385		Norfolk Southern Railroad Company, Berkley Termi-
	94			nals; Jones Cold Storage and Terminal Corporation
	95			(East Water Street Terminal); Lamberts Point
	96			Terminals (Norfolk & Western Railway Company
	97			Piers), Norfolk, Va.; H. B. Rogers, Inc. (Ports-
	98			mouth Division Terminals); Pier No. 1, Pinners
	99			Point Terminal, Portsmouth, Va. and Norfolk Tide-
	100			water Terminals, Inc., Pinners Point (Portsmouth),
	101			Va., will be in addition to the rate to and from
	102			Norfolk, Va. or Portsmouth, Va., as the case may
	103			be, published in tariffs lawfully on file with
	104			the Interstate Commerce Commission.
	105			

EXHIBIT 30—Continued

Line No.	Item	Subject	Rule 53
106			
107			(Applicable only where specific reference is made to this Rule)
108		Rule for Com-	
109		puting Rates	The rates or charges per 100 pounds will be
110		or Charges	converted to rates or charges per ton of 2000
111		per Ton When	pounds and applied per ton of 2000 pounds where
112	405	Rate or	provision is made that rates or charges apply
113		Charge Is	per net ton of 2000 pounds and the rates or
114		Published	charges so arrived at will apply per ton of
115		per 100	2240 pounds where provision is made that rates
116		Pounds.	or charges apply per gross ton of 2240 pounds.

EXHIBIT 31

Statement Setting Forth the Regulations and Charges of the Norfolk and Portsmouth Belt Line Railroad in Their Tariff I. C. C. No. 105, Governing Wharfage, Handling and Terminal Services at Norfolk and Portsmouth, Va., Applying on Traffic Moving Via The Pennsylvania Railroad To and From Points Shown in Group "C", Page 2, Hereof.

Line	Item 910-E. —	Section 3 Application of Rates
1	The wharfage, storage, handling or terminal charges shown in this section will apply on traffic to and from points shown in Group "C"	
2		
3		
4	Table of Wharfage, Handling or Terminal Charges	
5	Fertilizer Materials, imported and shipped to Richmond and South Richmond, Va., wharfage and handling per	
6	ton 2,000 pounds.....	63 cents
7	Freight in open top cars, except as otherwise shown, and tank cars, wharfage only, per 100 pounds.....	1¼ cents
8	Import and inbound coastwise lumber and other forest products taking lumber rates and pulpwood, when	
9	stowing in open top cars is required and freight is forwarded via Norfolk & Western Railway, The	
10	Pennsylvania Railroad or The Virginian Railway:	
11	Wharfage, per 100 pounds.....	1¼ cents
12	Handling, per 100 pounds (Note C below).....	2½ cents
13	Grain in bulk, wharfage only per 100 pounds (Note A below).....	1¼ cents
14	Tobacco, unmanufactured, shipped from Richmond or South Richmond, Va., for export, (when moving on rates	
15	not subject to storage in transit privilege) or imported and shipped to Richmond or South Richmond, Va.,	
16	wharfage and handling, per 100 pounds.....	2½ cents
17	Sugar, imported or when received from Pacific Coast by water and shipped to Richmond or South Richmond,	
18	Va., wharfage and handling per 100 pounds.....	3½ cents
19	All other freight:	
20	Wharfage, per 100 pounds.....	1¼ cents
21	Handling, per 100 pounds (Note C below).....	3¼ cents
22		
23	NOTE A—On bulk grain, elevator charges, lawfully on file with Interstate Commerce Commission, will be in addition to the wharfage,	
24		
25	NOTE B—For absorption of wharfage and handling charges under this section which are made by the various roads, see Tariffs	
26	lawfully on file with Interstate Commerce Commission and Virginia State Corporation Commission.	
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Territorial Grouping as Published in
Norfolk and Portsmouth Belt Line Railroad Company
Tariff 6-J, I.C.C. No. 105
Performing Terminal Services at the Hampton Roads Ports

Line
No.

Group C.

1
2 Ampthill..... Va.
3 Ashland..... Ky.
4 Beckley..... W. Va.
5 Bellbluff..... Va.
6 Bridge Jct..... W. Va.
7 Bridgewater..... Va.
8 Buena Vista..... Va.
9 Buchanan..... Va.
10 Ceredo..... W. Va.
11 Charleston..... W. Va.
12 Charles-Town..... W. Va.
13 Charlottesville..... Va.
14 Chillicothe..... Ohio
15 Cincinnati..... Ohio
16 Circleville..... Ohio

Columbus..... Ohio
Dayton..... Va.
East Huntington..... W. Va.
Elk..... W. Va.
Glasgow..... Va.
Guyandot..... W. Va.
Hagerstown..... Md.
Harrisonburg..... Va.
Hillsboro..... Ohio
Huntington..... W. Va.
Ironton..... Ohio
Kenova..... W. Va.
Lynchburg..... Va.
Natural Bridge..... Va.
Oak Hill..... W. Va.

Orange..... Va.
Owens..... W. Va.
Pemberton..... W. Va.
Petersburg..... Va.
Portsmouth..... Ohio
Richmond..... Va.
Roanoke..... Va.
Shenandoah Jct..... W. Va.
South Charleston..... W. Va.
South Richmond..... Va.
South Ruffner..... W. Va.
Waynesboro..... Va.
West Huntington..... W. Va.
West Moreland..... W. Va.

17 All stations on Chesapeake and Ohio Railway and all points not covered by Groups A and B. (Groups A and B cover,
18 with certain exceptions, points in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi,
19 North Carolina, South Carolina, Tennessee and Virginia, See Pages 4 and 5 of Supp. 142, N. & P. B. L. R. R., I. C. C.
20 No. 105).
21

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NOTE C—In addition to the above wharfage and handling charges on lumber, not otherwise indexed by name in Official Classification, (including logs, wooden poles, wooden piling, wooden ties and pulpwood) Domestic or Foreign, received direct from vessels to cars, or from piers to cars, or received from vessels by lighters or car floats, or received from intermediate storage, when loaded into or on cars for account of the line-haul carrier, the following charges will be assessed in addition to the freight charges, and will accrue to the line haul carrier:

On traffic paying rate of 19 cents per 100 pounds or higher.....
On traffic paying rate of less than 19 cents per 100 pounds (See Paragraph (b))...

(b) The total charges not to exceed 23¾ cents per 100 pounds or \$4.75 per 2,000 pounds for loading on open cars direct from vessels.
The total charges not to exceed 28 cents per 100 pounds or \$5.60 per 2,000 pounds for loading on open cars or into closed cars from piers, intermediate storage, or lighters.

LOADING CHARGE
Per ton 2,000 pounds

When loaded on Open cars direct from vessels	When loaded on open cars or into closed cars from piers, intermediate storage or lighters
94 cents 136 cents	179 cents 179 cents

EXHIBIT 38

LIST OF PRIVATE TERMINALS AT SOUTHERN PORTS

Export and Import Rates, Even Though Published as Applying to or from Shipside, Do not Include
Wharfage (Tollage) or Handling Charges on Shipments Moving Over these Terminals

Dock, Wharf or Pier	Operator of Facility	Cargo Customarily Handled
Algiers, La. Algiers Wharf	U. S. Naval Station	Government Cargo
Atreco, Tex. Atlantic Refining Company	Atlantic Refining Company	Own Cargo
Avondale, La. American Liberty Oil Company	American Liberty Oil Company	Bulk Liquids
Standard Oil Company of N. J. (Louisiana Division)	Standard Oil Company of N. J. (Louisiana Division)	Bulk Liquids
Baytown, Tex. Humble Oil & Refining Company	Humble Oil & Refining Company	Own Cargo
Brookley, Ala. U. S. Government	U. S. Government	Government Cargo
Chaison, Tex. Magnolia Petroleum Company	Magnolia Petroleum Co.	Own Cargo
Charleston, S. C. American Agricultural Chemical Corp.	American Agricultural Chemical Corp.	Own Cargo
Koppers Company (Wood Preserving Division)	Koppers Company	Own Cargo
Planters Fertilizer and Phosphate Co.	Planters Fertilizer and Phosphate Co.	Own Cargo
Virginia-Carolina Chemical Corp.	Virginia-Carolina Chemical Corp.	Own Cargo

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EXHIBIT 38—Continued

LIST OF PRIVATE TERMINALS AT SOUTHERN PORTS.

Export and Import Rates, Even Though Published as Applying to or from Shipside, Do not Include
Wharfage (Tollage) or Handling Charges on Shipments Moving Over these Terminals

Dock, Wharf or Pier	Operator of Facility	Cargo Customarily Handled
Corpus Christi, Tex.		
Bareco Oil Corporation	Bareco Oil Corporation	Petroleum Products
Magnolia Petroleum Company	Magnolia Petroleum Company	Petroleum Products
Southern Alkali Corporation	Southern Alkali Corporation	Own Cargo
Destrehan, La.		
Pan American Petroleum Corporation	Pan American Petroleum Corporation	Own Cargo
Fernandina, Fla.		
Container Corporation of America	Container Corporation of America	Own Cargo
Fernandina Phosphate Company	Fernandina Phosphate Company	Own Cargo
Rayonier, Inc.	Rayonier, Inc.	Own Cargo
Good Hope, La.		
Shell Oil Company, Inc.	Shell Oil Company, Inc.	Own Cargo
Gramercy, La.		
Colonial Sugars Company	Colonial Sugars Company	Sugar
Gretna, La.		
Gulf Refining Company	Gulf Refining Company	Petroleum Products
United Distillers of America, Inc.	United Distillers of America, Inc.	Bulk Liquids
Harahan, La.		
Friberg Mahogany Company	Friberg Mahogany Company	Own Cargo
Harvey, La.		
Commercial Solvents Corporation	Commercial Solvents Corporation	Bulk Liquids.
Penick & Ford	Penick & Ford, Ltd.	Molasses, Syrup
Swift & Company	Swift & Company	Own Cargo

Houston, Tex.

American Republic Corporation
 (Norsworthy Works)
 Armour Fertilizer Works
 Arrow Mills, Inc.
 Champion Paper & Fibre Company
 Crown Central Corporation
 Eastern States Petroleum Co.
 Gulf Pipe Line Company
 Gulf Portland Cement Co.
 Gulf Refining Company
 Houston Lighting and Power Co.
 Humble Oil & Refining Company
 Lone Star Cement Corporation
 Magnolia Petroleum Company
 Maritime Oil Company
 San Jacinto Ordnance Depot
 Sheffield Steel Company
 Shell Oil Company
 Sinclair Refining Company
 Southern Acid & Sulphur Company
 Tennessee Coal and Iron Corporation
 Texas Company
 Tex-Cuban Molasses Company

 U. S. Maritime Commission (War
 Assets Administration)
 Warren Petroleum Company
 Ingleside, Tex.
 Humble Oil & Refining Company
 Jacksonville, Fla.
 Duval Engineering and Contracting
 Company (Portion leased to the
 Dean Company)
 Wilson & Toomer Fertilizer

American Republic Corporation
 Armour Fertilizer Works
 Arrow Mills, Inc.
 Champion Paper & Fibre Company
 Crown Central Corporation
 Eastern States Petroleum Co.
 Gulf Pipe Line Company
 Gulf Portland Cement Co.
 Gulf Refining Company
 Houston Lighting and Power Co.
 Humble Oil & Refining Company
 Lone Star Cement Corporation
 Magnolia Petroleum Company
 Maritime Oil Company
 U. S. Government
 Sheffield Steel Company
 Shell Oil Company
 Sinclair Refining Company
 Southern Acid & Sulphur Company
 Tennessee Coal and Iron Corporation
 The Texas Company
 Tex-Cuban Molasses Company (Ralston
 Purina Co.)
 U. S. Maritime Commission (War
 Assets Administration)
 American Republic Corporation

 Humble Oil & Refining Company

 The Dean Company
 Wilson & Toomer Fertilizer Company

Petroleum Products
 Fertilizers and Materials
 Own Cargo
 Own Cargo
 Petroleum Products
 Petroleum Products
 Petroleum Products
 Own Cargo
 Petroleum Products
 Petroleum Products
 Petroleum Products
 Own Cargo
 Petroleum Products
 Petroleum Products
 Own Cargo
 Own Cargo
 Petroleum Products
 Petroleum Products
 Own Cargo
 Own Cargo
 Petroleum Products

 Molasses

 Own Cargo
 Petroleum Products

 Own Cargo

 Mahogany Lumber
 Own Cargo

EXHIBIT 38—Continued

LIST OF PRIVATE TERMINALS AT SOUTHERN PORTS

Export and Import Rates, Even Though Published as Applying to or from Shipside, Do not Include Wharfage (Tollage) or Handling Charges on Shipments Moving Over these Terminals

Dock, Wharf or Pier	Operator of Facility	Cargo Customarily Handled
Lake Charles, La.	Shell Oil Corporation	Petroleum Products
Haymarket Oil Terminal		
Lake Charles (West Lake), La.	Burton, W. T.	Crude Oil
Burton, W. T.	Continental Oil Company	Petroleum Products
Continental Oil Company	Kelly-Weber & Company	Fertilizer and Materials
Kelly-Weber & Company	Lake Charles Oil Terminal	Bunker Oil
Lake Charles Oil Terminal	Magnolia Petroleum Company	Petroleum Products
Magnolia Petroleum Company	Mathieson Alkali Works	Chemicals, Fuel Oil, Sulphur, Oyster Shells
Mathieson Alkali Works	Stevens and Company	Clam and Oyster Shells
Stevens and Company	Union Sulphur Company	Petroleum Products, Sulphur
Union Sulphur Company		
Magpetco, Tex.	Magnolia Petroleum Company	Own Cargo
Magnolia Petroleum Company		
Miami, Fla.	Belcher Oil Company	Bulk Liquids
Belcher Docks	Forty Fathom Fish Company	Own Cargo
Forty Fathom Fish Pier		
Mobile, Ala.	U. S. Navy	Government Cargo
Municipal Docks, Pier 3		
Morehead City, N. C.	Standard Oil Company of New Jersey	Own Cargo
Standard Oil Company of New Jersey		
New Orleans, La.	Anderson-Clayton Company	Own Cargo
Gulf Atlantic Warehouse Company	Gulf-Enterprises, Inc.	Own Cargo
(Alabo Plant-Charbonnet Street)		
Gulf Enterprises, Inc.	Jones & Loughlin Steel Corporation	Own Cargo
Jones & Loughlin Steel Corporation		
Wharf (Industrial Canal)	Lone Star Cement Corporation	Own Cargo
Lone Star Cement Corporation Wharf		
(Industrial Canal)		

New Orleans Port of Embarkation Wharf
(War Department), Poland Street
Otis Astoria Corporation (Jefferson
Ave and River)
Norco, La.
Shell Oil Company, Inc.
North Baton Rouge, La.
Solvay Process Company
Standard Oil Company of N. J.
(Louisiana Division)

Orange, Tex.
Texas Creosoting Company
Port Arthur, Tex.
Gulf Oil Corporation
Texas Company
Port Chalmette, La.
Chalmette Petroleum Corporation
Standard Oil Company of N. J.
(Louisiana Division)

Port Neches, Tex.
Texas Company
Port St. Joe, Fla.
St. Joe Paper Company Docks & Ware-
houses
Southeastern Pipe Line Docks

War Department
Otis Astoria Corporation
Shell Oil Company, Inc.
Solvay Process Company
Standard Oil Company of N. J.
(Louisiana Division)
Texas Creosoting Company
Gulf Oil Corporation
The Texas Company
Chalmette Petroleum Corporation
Standard Oil Company of N. J.
(Louisiana Division)
The Texas Company
St. Joe Paper Company
Southeastern Pipe Line Company

Government Cargo
Own Cargo
Bulk Liquids
Own Cargo

Bulk Liquids
Own Cargo
Own Cargo
Own Cargo

Petroleum Products

Petroleum Products
Petroleum Products, Roofing

Own Cargo
Own Cargo

Texas City, Tex.

Ludlow Corporation Pier C

Grain Elevator

Theodore, Ala.

U. S. Navy

Three Oaks, La.

American Sugar Refining Company

West Lake Charles, La.

Cities Service Company

West Port Arthur, Tex.

Gulf Oil Corporation

Texas Company

Westwego, La.

Commercial Solvents Corporation

Sinclair Refining Company

U. S. Industrial Chemicals, Inc.

Wilmington, N. C.

March 18, 1952

Ludlow Manufacturing and Sales

Corporation

Arrow Mills, Inc.

U. S. Navy

American Sugar Refining Company

Cities Service Refining Corporation

Gulf Oil Corporation

The Texas Company

Commercial Solvents Corporation

Sinclair Refining Company

U. S. Industrial Chemicals, Inc.

Own Cargo

Grain

Government

Own Cargo

Petroleum Products

Own Cargo

Own Cargo

Bulk Liquids

Bulk Liquids

Bulk Liquids

EXHIBIT 38—Continued

LIST OF PRIVATE TERMINALS AT SOUTHERN PORTS

Export and Import Rates, Even Though Published as Applying to or from Shipside, Do not Include Wharfage (Tollage) or Handling Charges on Shipments Moving Over these Terminals

Dock, Wharf or Pier	Operator of Facility	Cargo Customarily Handled
Port Wentworth, Ga.		
Atlantic Creosote Company	Atlantic Creosote Company	Forest Products, Lumber
a General Chemical Company	General Chemical Company	Own Cargo
b National Gypsum Company	National Gypsum Company	Gypsum and Products
c Savannah Sugar Refining Corporation	Savannah Sugar Refining Corporation	Sugar
Reserve, La.		
Godchaux Sugars, Inc.	Godchaux Sugars, Inc.	Sugar
St. Rose, La.		
Cities Service Oil Company	Cities Service Oil Company	Petroleum Products
Savannah, Ga.		
Gulf Atlantic Warehouse Company	Gulf Atlantic Warehouse Company	Cotton
Union Bag & Paper Corporation	Union Bag & Paper Corporation	Paper, Paper Products, Woodpulp
Virginia Carolina Chemical Corporation	Virginia Carolina Chemical Corporation	Fertilizers and Materials
Smiths Bluff, Tex.		
Pure Oil Company	Pure Oil Company	Petroleum Products
Sun, Tex.		
Sun Oil Company	Sun Oil Company	Petroleum Products
Tampa, Fla.		
Dantzer Lumber & Export Company	Dantzer Lumber & Export Company	Lumber
Tampa Marine Dock	American Fruit & Steamship Company	Own Cargo

Explanation of Reference Marks

a—Applicable on traffic owned by and handled for account of General Chemical Company

b—Applicable on traffic owned by and handled for account of National Gypsum Company

c—Applicable on traffic owned by and handled for account of Savannah Sugar Refining Corporation

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EXHIBIT 43

Statement Comparing Charges Predicated on Outstanding Section 22 Quotation with Charges Predicated on Published Tariff Rates on Representative Shipments Made from U. S. Marine Corps, Marford, Va., to U. S. Marine Corps Forwarding Depot, Army Base Terminal, Norfolk, Va., During the Period, May through September, 1951.

Rates Are in Cents Per 100 Pounds and Do Not Include
Ex Parte 175 Increases

Date of Shipment	Commodity	Weight (Pounds)	Charge Based on Section 22 Quotation	Charge Based on Domestic Tariff Rates	
				Rate	Min. Wt. (Pounds) Charge
5-18-51	5 Power Shovels & Parts...	43,400	\$ 95.48	31	24,000 \$ 134.54
7- 9-51	Barbed Wire	22,200	66.00	23	36,000 82.80
7- 9-51	Barbed Wire	37,500	82.50	23	36,000 86.25
7-19-51	998 Sheets Galv. Sheet Steel	53,340	117.35	23	36,000 122.68
7-24-51	200 Oils Rope	41,311	90.88	28	30,000 155.67
8- 3-51	{ 80 Bxs. Tanks, Water Storage, Rubber Coated Cloth with Rope Stakes	52,000	117.79	44	24,000 228.80
	{ 11 Bxs. Cotton Rubberized Bags			56	8.62
	{ 1,540			23	36,000 106.95
8-10-51	Pallets, Platforms or Skids.	46,500	102.30	23	36,000 106.95
8-15-51	1 Crane Derrick or Power.	26,500	66.00	31	48,000 148.80
8-16-51	4 Pcs. Scarifiers	56,600	124.52	31	48,000 175.46
8-29-51	278 Coils Rope	46,824	103.01	28	30,000 131.11
9- 5-51	{ 24 Pcs. Refrigerators, NOIBN, S.U. }	25,080	66.00	33	20,000 82.76
9- 5-51	{ 26 Pcs. Refrigerators, NOIBN, S.U. }	27,170	66.00	33	20,000 89.66
Totals			\$1,097.83		\$1,514.10

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Note—Flat charge of \$66.00 per car of 30,000 pounds, excess in proportion, when lower than charge based on tariff rates on freight, all kinds, except airplanes, airplane parts, and explosives, authorized, effective September 10, 1951, by ACL RR Section 22 Quotation No. 532.

Tariff Authority:

Agent C. A. Spaninger's ICC No. 440, SFTB Freight Tariff No. 635-B.
Agent C. W. Boin's ICC No. A-339, TLTTB Freight Tariff No. 69.
Wilmington, N. C.
March 21, 1952

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EXHIBIT 47

EXCERPT FROM C. A. SPANINGER'S SOUTHERN COASTWISE TARIFF

(F. T. 724-F) ICC 1146

Item 140.

Wharfage and handling charges necessary to effect delivery to or from shipside.

Except as otherwise provided in this tariff, rates published in this tariff do not include wharfage, handling or other charges necessary to effect delivery to or from shipside.

Rates applying to or from shipside on freight in tank cars, in this tariff do not include the service nor the cost of pumping between cars and ship or storage tanks unless specifically provided to that effect.

Such charges as published in tariffs lawfully on file with the Interstate Commerce Commission will be in addition to the rates published in this tariff.

The above provision also is published in Spaninger's Southern-Panama-Pacific Tariff, ICC 1228 and in Spaninger's Pacific-Panama, Southern Tariff, ICC 1229.

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EXHIBIT 48

EXCERPTS FROM SOUTHERN RAILWAY PORT TERMINAL TARIFF—
I. C. C. A 11248

Item 405. Application of wharfage, handling or other port terminal charges on export, import, intercoastal or coastwise traffic at Norfolk, Va., moving through Norfolk terminals, Division of Stevenson & Young, Incorporated, Norfolk, Va.

(1) On traffic originating at or destined to stations designated as group 1 in Item 50, the line-haul rates applicable in connection with the Southern Railway Company will include the wharfage, handling or other port terminal charges.

(2) On traffic originating at or destined to stations designated as Group 2 or 3 in Item 50, moving on rates applicable to or from shipside, the wharfage, handling or other port terminal charges will be included in the line-haul rates applicable in connection with the Southern Railway Company.

(3) In all other respects wharfage, handling, storage or other charges will be in addition to the line-haul rates.

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UNITED STATES OF AMERICA VS.

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DEFENDANT'S EXHIBIT 51

**PRIVATE INDUSTRIES IN NORFOLK-PORTSMOUTH AREA HAVING DEEP-
WATER FACILITIES AND RAIL CONNECTIONS**

American Oil Company (Mexican Petroleum Corp.).

Armour Fertilizer Works.

Co-operative Fertilizer Service.

Chilean Nitrate Sales Corporation.

Gulf Refining Company.

Imperial Tobacco Company.

Jones Cold Storage Company.

Lone Star Cement Corporation.

Pure Oil Company.

Robertson Chemical Corporation.

Royster, F. S., Company.

Smith-Douglass Company.

Standard Oil Company.

Swift & Company (Fertilizers).

Texas Company.

Virginia-Carolina Chemical Corporation.

Weaver Fertilizer Company.

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DEFENDANT'S EXHIBIT 52

Seaboard Railroad at Portsmouth, Va.	Number of Carloads Pier has Accommodated		Number of Carloads Currently Moving Over Pier Monthly
	8-hour Day	Monthly	
Pier 6			
Equipped with closed warehouse and 2 tracks with total of 9 cars capacity.....	30f	780f	None
Pier 7			
Equipped with closed warehouse and 2 tracks of 8 cars capacity each.....	60a	1354b	None
Pier 8			
Pier 9			
Joint pier with one large encl'd warehouse ac- commodating both piers. Equipped with 5 tracks with total of 60 cars capacity.....	60a	1625b	195e
Pier 10			
Open pier (no warehouse) equipped with 1 track, 5 cars capacity.....	10c	250d	15g
Total.....		4000	210

Seaboard Railroad investment in waterfront
facilities at Portsmouth \$701,000.

Explanation of Reference Marks

- a—Actual number handled in one day during January 1941.
- b—Actual number handled in one month—January 1941.
- c—Actual number handled in one day during June 1944.
- d—Ten cars per day multiplied by 25 working days.
- e—Actual number handled in January 1952, a typical recent month.
- f—Estimated.
- g—Actual number handled in February 1952.